GERMAN LEGAL HISTORY
AND
GERMAN LEGAL THOUGHT

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German Legal History and Thought

Johann von Leers

HERITAGE

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Vorwort

This booklet cannot and does not intend to replace a textbook on German legal history. It is a guide that aims to present the major lines of development and the most important facts.

The things that are not absolutely necessary but are useful and valuable are added in small print.

As far as possible, scientific disputes have been avoided as far as details and secondary issues are concerned. However, the disputes between the theories, where they are indispensable for understanding, are taken into account in the notes.

This account is also based on the idea of race and ethnicity. It therefore allows the history of German law to begin where its very earliest roots can be visualised, in the basic forms of Indo-European law developed by comparative jurisprudence.

The political significance of legal institutions is emphasised everywhere. The law does not exist in a vacuum, but is realised through the struggle of people. Behind these people, however, are not only political and economic interests, but also racial and emotional dispositions. The importance of favourable and the effect of harmful developments of the law on the development of our people has been shown. Too great a suppression of factual material has been avoided. For as alarming as it is to overemphasise the details, to suffocate in the material, the basic features and lines of development also need to be understood, since they result from numerous details that Knowledge of at least the most important individual facts.

I hope that this booklet will help law-keepers and fellow citizens to arrive at a National Socialist understanding of German legal history, one of the most instructive parts of our history and of German legal thought.

Berlin, October 1938.

Prof Dr v. Leers.

Introduction

Significance of German legal history

I. What is German Recbtsgescbtcbtet

German legal history is the development of law among individuals {private law) and among the organisations of the community among themselves and with individuals (public law) in Germany.

A. The history of law is to be understood by

   a) of the general history, especially political history, cultural and economic history. However, since general history, economic changes and cultural trends have had and continue to have an impact on the development of law everywhere, reference must be made to them everywhere;

   b) the individual legal documents (deeds, law books, etc.). These do not show us the law in its development, but in a certain state. They also have their own history (e.g. history of the editions and commentaries of the Saxon Mirror).

Legal history can be categorised into:

   a) all competitive research. Dieae deals with the development of law in its entirety. It shows us the forces and impulses that have had an effect on the law;

   b) The history of the individual legal systems. It shows, for example, the development of constitutional law, criminal law, private law and municipal law.

B. The German **BecbtsgescbJcbte Is**

   a) the **history** of law as it developed among the German people;

b) Linked by close blood ties, German law is closely related to the other germen rights. It shares many basic ideas with them.

A distinction is made between these rights

aa} those West Germanic tribal laws that were not absorbed into the German people. These include Anglo-Saxon law in England, Frankish law, insofar as it has been preserved in French legal sources, Dutch law and, to a certain extent, Swiss law.

bb) The surviving rights of the North Germanic peoples (Danish, Swedish, Norwegian and Icelandic law) and the rights of the vanished East Germanic peoples (Goths, Vandals, Burgundians, etc.) derive from the same roots as German law from the common Germanic conceptions.

c) Germanic people, in turn, are linguistically a branch of Indo-European people. Rasaically, it shares the Nordic racial basis with the other Indo-European peoples (the Slavic, Romanic, Baltic, Celtic, Hellenic, Sanskrit-Iranian groups and the ancient Romans). Just as the languages of these peoples still reveal their affinity, the history of Germanic law is also preceded by an "Indo-European law" that is more or less the same for all these tribes, the forms of which we can deduce through comparative law.

C In the course of German history, foreign rights have been incorporated { "received") into Germany. These are:
1. ecclesiastical (canonical) law, 2. Roman law (in several waves, most strongly in the 5th century), 3. Longobard feudal law, 4. the French legislation of Napoleon I.

D. History of the German legal system

The study of the history of actual German law is not old.

The first account is the book by Hermann Conring
"De origine juris Germanici" (1643). This work, written in Latin, provides an overview of German legal history which, although outdated in some respects, is still correct today. Hermann Conring, who also dealt with certain racial issues, found few followers in the 17th and 18th centuries, as this period was dominated by natural law and sought to derive the law from the

reason. Historical studies were of little interest at the time.

It was not until the 19th century that a separate German legal history developed. Its founder was **Carl** Friedrich Eichhom with his work "Deutsche Staats- und Rechtsgeschichte "i The representatives of this German legal history were called "Germanists" in contrast to the Romanists who researched Roman law.

On the basis of this research, a whole number of important works have been produced, such as:

K. v. Amira : " Clrundriß des germanischen Rechts."
Heinrich Brunner : " Deutsche Rechtsgeschichte."
Claudius Freiherr von Schwerin : "Grundzüge der deutschen. Legal history."
Schröder-von Künßberg : " Lehrbuchder deutschen Rechtsgeschichte."
Jakob Grimm : "Deutsche Rechtsaltertümer."

E. Presentation of the German Bechtaeschlchte

We have chosen the historical method in our presentation: this is based on the major historical periods and deals with the entire legal material within each period. We divide our presentation into the following sections:

1. The recount of the indogremanical process : Here we present what we can deduce on the basis of the results of comparative jurisprudence as the legal concepts of the early building cultures of the Nordic peoples before their final separation into the individual language groups (Germanic peoples, Hellenes, Indo-Iranians, etc.). It is generally not much and only a number of basic concepts.
2. The Germanic period. It covers the period from our earliest knowledge of the legal history of the Germanic tribes to Christianisation.
3. The German Mittelalter.
4. Of the reception of the Rome country until the end of the purchase.
5. The law of LiberaJismus in the 19th and 20th centuries.
6. The legal development through the Nationalsocialismua.

H. Why we learn German law

1. To better recognise the current law, which has its roots deep in the past.
2. Understanding the renewal of our law. The programme of the NSDAP. Point 19 says: "We call for a commitment to the Roman Empire through a German society." Thus the alienation by Roman law, but only in so far as it brought ideas alien to the race and served the materialistic world view, was to be brought to an end everywhere by a German common law. Such a renewal of law must be based on the legal conceptions of our people as they are in accordance with their nature. The study of German legal history serves this realisation in particular.

1. Tell

The recbt of the fadogerzsazztscben €lrvoZkes

1. The]ungstetnze1tle peasantry: Around the year 8000 B.C. we find the first resident farmers of the Nordic race in Northern and Central Europe. We can follow how they perfected agriculture and animal husbandry, increased in number and how different cultural circles developed from them. In this "Neolithic period", an advance of the so-called "Corded Ware people" (so called after the cord patterns on their vessels) from their base in Thuringia then overlaps the neighbouring, racially equally strong Nordic peoples. It is seen as the beginning of the formation of the individual Indo-European peoples. The Sanskrit Indians (to India), the Iranians (Medes and Peraians to Iran), the Baltic peoples {Lithuanians and Latvians, plus the extinct Prussians) and the large group of Slavs moved eastwards; the Illyrians and Hellenes slowly migrated south-eastwards. The Celts, the Italics and the Germanic peoples lived together for the longest period of time. They were formed from the combination of the Hunebed builders (mostly Faelian Raase) and the Nordic Corded Ware (along with some other Nordic groups).

2. The cultural status of the Indo-European group before their separation: By comparing the words common to all Indo-European languages, which thus go back to a common root, linguistics has shown us that

these peoples all have "wagons", "axes", "sickles", "seeds", "ploughs", "harrows" and a whole range of farming tools. Excavation science confirms this. All these peoples, as they slowly separated from each other, had a peasantry that already had land boundaries, farms, a fixed order of marriage and inheritance, communities and tribal organisation. All of this is not possible without certain basic concepts and organisations of law.

3. The law of the Indo-European peoples as "lromme law": Comparative jurisprudence has analysed the legal systems of the Indo-European peoples. In all of them, there is a long period in which the law is not written and is considered to be of "divine origin" (in Latin "fas" - the "pious law" as opposed to "jus" - the "law of law"). However, we do not hear anywhere, as with the oriental peoples, that a prophet (e.g. Moses or Mohammed) received commandments from a god and that these then became the basis of the law.

On the other hand, it is striking that in many Indo-European languages the word "law" and "right" are related, that the terms "order", "right", "kind", "reason" all derive from the same word.
be derived from the same stemi).

The "order of the world": All Indo-European peoples share the view that, just as the year has its fixed order within itself, so too does the world have a divine order that speaks to people in their conscience.

Therecondition: This order can be "known" by those who are of a good nature themselves. He can therefore also show others the law. It is because of this view that all these peoples shied away from writing down the legal system - their rights are not only "foreign to the Scriptures", but also internal.
"anti-scriptural": nobody can write down the world order. This is also the origin of the view that "one cannot make the law, but can only say what the law is").

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[1] Among all ancient Indo-European peoples, judgement was held in a stone circle made of twelve stones. This was the stone sun clock, which was also used to determine the position of the sun and the time. The judge sat where the sun was highest in the year (summer solstice), in the north: thus the course of the sun went "round to the right".

•) Cf. the difference to the Orient: there the great sin of Adam and **Eve** is that they "want to know what is good and what is evil", whereas among the Indo-Germanic peoples the "knowing man", who knows what is good and what is evil, is the judge.

"Solar law": All law of these peoples is therefore at its root "solar law", it is derived from the good order of the world'),

4. Indo-Germanic law is rich in symbols: Since law was taken from the good order of the world, all things could easily become symbols of law. The tendency of a peasant people to make legal relationships as open and "clear as day" as possible worked in the same direction. The symbol is often inseparable from the legal act').

5. Marriage: "The legal system is built on marriage" (Leist. Altarisches Jus civile I, 74). The necessity of marriage arises from the peasant economic order, a housewife is necessary for the farmer, several peasant women would manage the farm (in contrast to nomadic farming, where the number of women increases with the size of the herd and several women are welcome labour1). The purpose of marriage is the reproduction of the tribe through legitimate, legitimate children.

B. The higher marriage: All Indo-European peoples recognise blood barriers to marriage. Foreign or other racial blood is not married, unfree and free people cannot marry each other. "The child follows the stronger hand." Such conscious selection results from the farmer's equal experience of the benefits of good and the harm of bad mixtures of species in animals and plants. Children who are clipped are not raised; among most Indo-Germanic peoples there is the custom that the father must "take in" the new-born child, i.e. he must first make an explicit commitment to it.

7. Basic principles of marriage law: husband and wife form a partnership, the wife is not the property of the husband.

•) This is why the court "sits", even in the Middle Ages court hearings were cancelled when the sun went down i swearing was done in the sun, even today full trials generally do not take place at night - not because the guilty party is asleep, but because of the old tradition that justice should be "clear as day" and not walk in darkness.

•) For example, the hearth as a symbol of the smallest living unit of the house: when a new house is opened, the hearth is lit, the offender's hearth fire is extinguished, the bride and groom first walk around the hearth together or light the hearth fire together. The tree is a symbol of life, so it is as much a part of the administration of justice as it is of worship. Justice is dispensed under trees (lime trees, oaks), and according to some laws a tree must be planted when a marriage is solemnised or a child is born. The criminal is hanged on the dry tree.

nes, she is not a subject, but his companion in life, who is under his protection.

8. **Male** power of representation: Among all Indo-European peoples, the father of the house had protection and power of representation over his household members, i.e. over all those who lived with him in a community "under his roof".

9. The Indo-European land law: The farm is an economic unit. Very early on we find among all Indo-Germanic peoples that the farm is not divided, but passes to a son from a legitimate marriage without encumbrance or pledge, together with the associated inventory').

Mobile, movable property, on the other hand, was probably always freely alienable.

10- Inheritance law: Indo-European peoples do not seem to have known wills and free inheritance at first. "The estate runs with the blood", i.e. there was only the natural succession of children to their parents. If there were no sons entitled to inherit, the inheritance took place in the order of parenteles, i.e. first the father of the deceased and his sons, then the grandfather and his sons, and finally the great-grandfather and his sons.

11. The Slppe: Just as the estate fell back to the parent group of the grandfather or great-grandfather in the event of a lack of children, those descended from a progenitor also felt connected by blood. This community was called a clan (Germanic "Sippe"). The clan formed a community of peace and law, it was the next higher order above the house father. It obviously fulfilled a number of duties early on that we can only imagine today as state duties (guardianship of orphans, care of the poor): the Indo-European peoples went to war according to clans, they appeared in their popular assemblies according to clans, the clan helped its members in court.

12. The people: The Indo-European peoples were probably originally composed only of sexes; anyone who did not belong to a sex was not a full-blooded member of the people. The people became politically effective at their popular assemblies, in which all men capable of bearing arms took part.

Remnants of this Indo-European land law were found until modern times in the "Odal" of the Swedish and Norwegian farming communities, in the Zadruga among Serbs and Bulgars; originally, however, the indivisible, unencumbered farmstead descended from one son was present among all Indo-Europeans.

ners took part armed. There was no officialdom and probably originally no kingship.

13. The Krleg: War was originally understood as a legal relationship by all Indo-Germanic peoples. The gods are asked whether the war is also wanted by them. They did not want to "start with unjust hands", war was solemnly declared and the decision was often sought on a previously agreed battlefield through a duel between the leaders of both sides. Sacrifices were made before the battle. Because war was a legal relationship, it also enabled the legal acquisition of property. {"Sub hasta" - under the lance; hence the term subhastation 1). It is ended by the conclusion of peace or by subjugation. Because it is a legal relationship, there are certain basic concepts of international law (sanctity and inviolability of the envoys); the captive becomes the property of the victor. Slavery was known to all Indo-European peoples. The custom of ransoming slaves may have developed early on.

14. Criminal law: State criminal law was initially poorly developed among all Indo-Europeans. Each community (house, clan) avenged the offences committed against it itself. The head of the household was allowed to slay the thief or adulterer in the act without punishment, the clan avenged the killing of one of its members through blood revenge, and only in the case of violations of the community (war treason) did the community itself take action. Most Indo-Europeans seem to have developed the concept of the four great "unjudgements" early on: two against the court (arson and theft), two against the blood (murder and desecration). These made the perpetrator peaceless. He was left to the vengeance of all and of the gods, to whom he had proved himself an enemy.

15. Process: The legal relationships should be as clear as possible. The basic idea was that everyone was allowed to take his own rights as soon as they were established and that anyone who prevented him from doing so was breaking the peace. Thus the law of the Indo-European peoples everywhere endeavoured to make all legal relationships so clear through the greatest possible publicity (common border crossings, ceremonial weddings, public defence) that their existence could hardly be doubted. The task of the judge was not to find in favour of one party and condemn the other, but to pronounce what was right in each individual case. Execution was then left to the party. The judge's decision was therefore not based on a complaint, but on a judgement.

Betting contract between the parties: Each party bet a value that would **go to** the other if the judge ruled that the other's view was lawful.

18th dukedom: As soon as the arable land became too narrow and an Indo-European peasantry had to migrate in search of new land, but also in times of war, the assembly of free men bearing arms proved to be too cumbersome. In this case, a temporary leader was elected who "marched before the army" (duke, lat. dux, from today's Duce, Slavic: Wojewoda, still used today as an official title in Poland).

17 The roots of the Il6nlgtum: The kunna seems to have originally emerged from the judgement, as comparative linguistics teaches. Men of particularly ancient and respected lineage (king of kunna - lineage, descent) inherited their position as supreme judges; they were not lawgivers but law enunciators, deriving their origin early on from the gods who knew the law.

Much later, the war seems to have ended; an army or migration leader occasionally retained his dignity in peace and tried to pass it on to his heirs.

Summary

A comparison of the early legal forms of the Indo-Germanic peoples can only give us certain outlines. The Indo-Germanic peoples obviously diverged early on, as in the field of language, so also in the field of law. However, their laws never lost a certain similarity, as these peoples all had the same Nordic racial core and lived in very similar farming economies for thousands of years.

2. Tell

The law of the Germanic tribes

1. Assessment

The Germanic people

1. The Germanic **tribes** represented that part of the Indo-Germanic tribes that essentially remained in the old homeland and can be seen as a fusion of the Nordic Corded Ware- makers with the Nordic-Faelic barrow builders'),

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•) Cf. Hans F. K. Günther: "Rasse and Herkunft der Germanes."

2. According to their language, the Germanic tribes were divided into:

a) Skandinavier and Ostgermanen.

The Scandinavian nations still live today as Swedes, Danes, Norwegians, Inlanders and Faroese people; the eastern Germanic peoples (Goths, Vandals, Burgundians) have perished.

bl WestGermanen or Deutsche.

Their descendants are today's German people and the Dutch, but they also include the Anglo-Saxons, who colonised England, and the Lombards, who were Romanised in northern Italy.

3. The West Germanic tribes were not a single **state** when they came within the scope of our earliest reports.

They were divided into individual tribes; the tribal saga summarised the numerous small tribes into three tribal groups of the Ingvaeons, Istvaeons and Herminons. It was not until the battles against the Romans that the individual tribes were regrouped into political organisations. This gave rise to the tribes of the Franks, Saxons, Frisians, Thuringians and Swabians.

4. The earliest reports about the Germanic tribes are found in Caesar (around 50 BC) and in Tacitus in his work "Ger- mania" {**100** AD)¡ In addition, we find scattered information about the legal life of the Germanic tribes in other Roman writers, occasionally also in Greek writers.

5. All reporters agree that at the time of their early contact with the Romans, the Germanic tribes were rasherecommunication and recommission.

2. Assessment

The economy of the Germanic tribes

1. Germanic peasantry: In contrast to the migrated Indo-Germanic tribes, many of whom (Hellenes, Romans) had adopted an urban culture, the Germanic tribes had remained thoroughly rural.

a) Their **agriculture** had made some progress compared to the Indo-European period, there were individual farms and villages.

bJ The **Elnzelbol** consisted of the farm with its buildings, the associated farmland and the share of the common land. The farmland was only partly used after the aaJ "wilden Feldgraswirtschaft", i.e. used without any particular order, sometimes as arable land, sometimes as pasture. Here and there I also found the form of the

bb) "Schwendens": a piece of land was cleared by burning down the forest growth, cultivated with grain and then left for a few years, another piece was cultivated in the same way. More common was the

cc) Dreifeld development: the field of the farm was divided into three parts, the first field was cultivated with winter grain in the first year, the second with summer grain and the third was left fallow. The next year, the second and third fields were cultivated and the first was left to rest, in this way each field was left to rest once every three years. Black fallow was still unknown.

cJ A number of individual farms had a share in the commons. All of them were united to form a "commoners' association", which regulated the use of the common.

d) The Germanic Dort was very often the result of young farmers of the same clan settling together. This is the origin of the numerous village names based on "ingen" (ing m "descent from "J. The settlement took place in such a way that each householder was allocated a farmyard, to which a piece of garden land probably belonged early on.

The entire arable land of the village was divided into three large fields. Each farm had a share (Gewann) in each field, which was fairly equal in size for the individual farms. These three large fields were farmed according to the rules of tillage, i.e. one field was cultivated with winter grain, one field with summer grain and the third field was left fallow.

Ploughing was the necessary consequence of this economy: so that one did not pull the other over his share with plough and cart, the land had to be cultivated at the same time and harvested at the same time. The village cattle were grazed together on the stubble.

f) **Polgen:** Dreifeld development and rourchange forced a certain uniform peasant performance; no one could easily lag behind the line of ploughers or mowers*1.

g) At the village meeting, the common affairs of the village were discussed (starting work, fencing, wells, pasture issues, etc.). It was the beginning of the village council. It was probably not attended by all men capable of bearing arms, but only by the self-employed householders who had "their own fire and smoke".

2. Odalsrecht: The farm with the three shares ("Gewonnen") - one in each of the three parcels of the village parcel - and the

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'J But this was not an "agrar community mua". The I.and was not redistributed annually, nor was it the common property of the village genoaaes, which was distributed for special use (so-called "field community with changing hoof order"), but the three shares (one in]each field) belonged to each farm indivisibly. Each farm had an originally equal share of the land (pasture, water, forest, hut).

Usufructuary rights to the village common formed a legal unit. They were inherited inseparably by only one son from a legitimate **marriage** (it was therefore not possible for a farmer to leave the use of the commons to one child and half of the farmstead and perhaps one of the three fields to the other). The farmstead, the share of the three fields of the village and the share of the common land belonged together legally because they were economically related.

The advantage of the right of odal was that it secured the family's home in all cases and created a prosperous - by the standards of the time - and economically secure peasantry on its farm, barring unforeseen hardship.

3. The compulsion to migrate: a) "Normal migration": Sons who were not entitled to an inheritance first set up their own farm in the commons, until this came to a natural limit due to the need to maintain the communal use of the old farms. In such cases, the young farmers moved on with their wives and tried to acquire new land.

b) Movering: This "normal" migration, so to speak, was accompanied by a migration of entire Germanic tribes (the earliest being the Cimbri and Teutons) at the time of the contact between the Ger- mans and Romans. Deterioration of the climate in the north and the destruction of whole communities in the North Sea forced them to migrate').

3. Assessment

The legal system of the Germanic peoples

I. The Hausvater

The Germanic farmer as the head of the household had the "Munt" over his household members.

1. Munt and attitude: The munt of the head of the household was limited by the pious law of the people; it encompassed rights and duties. The head of the household represented all members of the household externally, not only the wife and children, but also the guest. He was liable for any damage caused by the members of the household').

•) Cäaar came across the ongoing migration of the Swabians from the eastern lake region to the Rhine just as he was crossing the Rhine; this explains his striking description of the Swabians' form of economy, which does not report on a settled farming people but on a migrating farming people.

-The cases where he was able to kill the children or sell them into bondage are rare, but attested. Abandonment of children was only common in the case of crippled and inferior children.

2. Protection and food: The head of the household had to feed and protect the members of the household.

3. Marriage: The domestic community was established through marriage. Marriage took place in forms that proved the woman to be the man's partner (the groom gave his horse and weapons to the bride). Marriage customs were good, the number of children was considerable, adultery was severely punished, but divorce seems to have been possible early on.

The father's authority over the children lasted as long as the children lived under the father's roof as dependents. It did not end when the children reached a certain age, but when the sons became economically independent and the daughters married.

II. Thesipe

1. Every Teuton belonged to a clan.

The legal status of the individual depended essentially on his clan affiliation.

2. The two slops: One distinguishes:

eJ The sippealsofalltheBlutsvents,
i.e. all persons who are related by descent.
are used. Within this clan, a distinction is made between

aa) Schwertmages: daa are the male relatives in the male line;
bb) Kunkelmagen or Spindelmagen: these are all relatives of the female sex as well as all males descending from them.

This first form of kinship, which encompassed all blood relations (so-called cognatic kinship), corresponds almost exactly to our kinship. Its legal significance in Germanic times was slight.

b) The Sippealsasagnaticalsituation comprised all those who had the same progenitor in the male line (agnaticsipel.

This community was of the utmost importance.

The members of the same (agnatic) clan were

aa) a peace organisation. They granted each other peace and protection against third parties. If a member of this clan was killed, the members of the clan took revenge. They were also given the money (first the whole, then a part), which was paid by the clan of the perpetrator8.

bb) The clan supported needy clan members, took part in the funeral ceremonies of a clan member, supervised the guardianship of minors who were not under parental guardianship.

were under guardianship. This was usually performed by the guardianship was carried out by the next Schwertinagen.

- cc) The right of inheritance was tied to the clan. Whoever left the clan no longer inherited from the clan (even in the high Middle Ages, the Föhr Frisians still held that "the right of inheritance ends where the obligation of blood revenge ends").
- dd) The clan went to court to protect each clan member and provided him with oath keepers.
- ee) The clan was a fighting community in war. The army was organised into clans.
- ff) The clan was a cult community; they celebrated communal memorial feasts for their ancestors.

c) Inclusion in the clan and departure from the clan.

The clan could exclude unworthy members. If a man was laid peaceless by the people, his clan membership was also cancelled (because the clan was not a state within the state, but was under the state).

It was probably not originally possible for strangers to join the clan, as the clan was an association of people of the same descent. Later, we find evidence (among the North Germanic tribes) of the "gender lineage" - there were ancient ceremonial forms according to which a non-kin could be accepted into a clan.

III. Blutsbrouderschaftandgroupschaft

1. Blood brotherhood: As with other Indo-European peoples, the Germanic tribes also had blood brotherhoods, through which brotherly rights and duties, especially protection and revenge, could be assumed. They probably first played a major role in maritime communities. They are the roots of medieval ship partnerships and some guilds.

2. Followers: Tacitus tells us that young men entered the service of respected war leaders for a period of time, lived in their house and **went** to battle with them. This relationship was not for life'°).

IV. Thegroupofthegermanialstatements

Dle St&ade

In every Germanic tribe, there were three groups: the friens, thelites and thenews. The value money, i.e. the amount required to atone for a manslaughter or a murder.

'-) The best description of such a Germanic following - most of them were probably very small - can be found in the Anglo-Saxon Beowulflied.

The amount that had to be paid to the clan of the slain or injured person was graded according to his birth status.

1. The Prelen made up the majority of the Germanic tribes. They were the real people. They formed a birth state from which one could leave (through enslavementJ or enter (through the very late release to full freedom), but which was passed on from father to son. A distinction was made among the free:

a) The Gemelnfrelem formed the core of the tribe:
   The commoner's wergeld was the normal wergeld. The mass of the common freemen formed the army and the reporting community.
   The common freemen were economically farmers.

b) The nobility.
   They were members of families of the commoners who had a higher status or greater influence. In many cases they were probably the owners of the old tribal farms.
   Special privileges were not economically linked to their position.
   connected. They were also farmers.
   Usually, however, the kings and dukes were taken from their group, in accordance with the Germanic view that abilities were inherited and stuck to the family. A higher value of the nobles only emerged after the Migration Period.

2. The Llten (or Laten) were a hereditary class that was inferior to the freemen in terms of rights:

aJ Lites were: Members of Germanic tribes who had submitted to another Germanic tribe: unfree people who had been set free and given a hat, but were bound to the previous lord to pay tribute; also free people who had been reduced to the legal status of a lite .**dle in**

b) The legal status of the Lites.
   The Lites had legal capacity, but were obliged to pay taxes and render services to a free man; if they had received a piece of land from him for use, they were not entitled to leave it.
   The value money of the Lites was always less than the value money of the Priests. In detail, the legal status of the Lites and their number varied greatly depending on the individual tribes. Among some (e.g. the Saxons) they took part in the administration of the state, while among the Bavarians they were originally almost completely absent.

3. The unfree: The unfree did not form a **class,** but were not persons in the legal sense, but rather sinners. The unfree were prisoners of war, members of violently subjugated peoples, free men who had brought themselves into bondage through gambling or excessive debt. They were things and therefore without rights:

a) The unfree man was at the mercy of his master, who could sell him or kill him. The actual treatment was milder.

b) The unfree man was a slave; what he acquired, he acquired for his master. Here too, however, in practice it was

It was customary to give a piece of land to the unfree for their own cultivation, from which they only paid taxes and services.

c) The lord was liable for any damage caused by the unfree man, just as he was liable for damage caused by his cattle.

d) The unfree man could not enter into a marriage in the legal sense: but everywhere there were tolerated marriage-like unions between servants and maidservants. The sexual union of a free 1"-woman with a servant made the woman unfree: the child also became unfree. The farmer could dispose of the unfree maidservants; any children he produced with them were unfree ("cone" - hence the term: "with child and cone"), because in Germanic marriage there was only a duty of sexual fidelity for the woman, not for the man (because it was only important to keep one's own family blood pure1).

e) No wages were paid for the slain unfree man because he was without a clan: only the lord received compensation.

f) The enfranchisement of the unfree was possible: it was carried out by conscription with the consent of the people's assembly or by the king. The freedman was usually lite, later a release to full freedom came up.

V. Staateandprovisiono fthegovermanners

While the modern state has basically taken over all public

Whereas in the Germanic period (and even in large parts of the Middle Ages) the relationship was the other way round. Each association, from the household to the clan to the community, first of all performed all the tasks that it was able to fulfil: only what went beyond that was a matter for the state.

The Germanic state is thus limited to the upper echelons of society and to warfare and peace.

1. The state organisation was very simple, it consisted of

a) The Volkaversammlung ("I.andegeinde "J for the whole tribe, even where a king was at the head. Theae was the highest organ and decided on war and peace, judged in high legal cases.

b) In the case of larger tribes, there were also gau-valuations for the individual landscapes.

2. The basis of the state was always the community of the people. The people {not the king, where there was one, nor a priesthood) was the sole basis and origin of all state power.

3. The Landsgemelnde (People's Assembly): The Landsgemeinde {Thing) was the general assembly of all free people:

a) It usually met at certain times. The beginning of the meeting was marked by a solemn "Hegung", its end by a final "Hegung". The meeting place was a sanctuary.

tum. All participants appeared armed. All the men in defence (not just the self-sufficient farmers, as in the village community) joined in.

b) The king or a respected man, often a farmer, who had a hall of the gods or a place of sacrifice on a farm ("Gode") was in charge.

c) There was no vote, applause was signalled by the clashing of arms, rejection by loud grumbling.

The community of the Lands community was among:

a) The decision on war and peace, the conclusion and dissolution of alliances.

b) The election of the king, the duke, the appointment of envoys to other tribes or peoples, the appointment of other representatives of the whole people.

cl The administration of justice for serious offences directed against the national community.

d) The acceptance of young men into the community of men in defence.

e) The release of unfree persons and the admission of lites or unfree persons to full freedom.

4. The kingship: Even where a kingship existed (among the East Germanic tribes), it did not exercise its own power, but only that delegated by the people.

aJ The election to kingship took place by raising the chosen one on a shield. Generally speaking, kingship was not hereditary, even if people liked to stick to proven lineages.

b) The king was able to be dismissed by the congregation.

c) Where there was no kingship, there were often "principes" (principes, regiili)ii).

d) The Herzog was a respected man with war experience, who was appointed to the head of the tribe in times of war and migration. As such, he had unlimited authority, but could neither transfer nor bequeath his office.

VI. The heard of the germanes

1. The people's army: Every free man was obliged to join the army in times of war; he catered for himself during the war. The army was the people in arms.

") The "Gaufürsten" were also elected by the Landsgemeinde and could be dismissed by it. The "Gaufürßten" led the military divisions of the individual Gaue and above all formed a council that prepared the matters to be discussed at the Landsgemeinde. The Latin expressions " reguli" or
"principea", "little kings" or "princes" actually give a false picture of the position of these men. They were great peasants who were trusted by their neighbourhood to manage the day-to-day administration and conduct the negotiations at the Volkaver8 assemblies.
to prepare. As "Redjeva" we find the office in the Free data of the North sea friezes still in the Middle Ages.

a) The ruler was the elected duke, where a kingship existed, the king; physical incapacity to perform military service made the king unfit for his office.

b} Dae Heer was originally organised everywhere according to clans, but was later divided into hundreds (the large hundred of 120 men) and thousands.

c) The Germanic tribes' method of attack was the "hauende Eher- kopf"; the **attack** was wedge-shaped; the best men stood at the head of the wedge, the mass pressed on, the cavalry covered the two wings.

2. The retinue: The retinue system served the war, but not only the people's war, but also the feud of individual powerful people.

a) The allegiance was a temporary relationship between young men and a respected man of war, limited to a few years. It was a reciprocal relationship. Only later did it become a permanent relationship.

The retainer lived **in the house of** the lord and was under his control. The lord provided him with maintenance, accommodation and protection. The follower had no say in the community, as he was under someone else's authority.

b} The retainer fought for the retainer's husband, to whom he was obliged to be loyal, although this could not originally have been directed against his own people. The importance of the nature of the retinue was at first small, if only because the wealth of the small tribal kings was apparently not sufficient to maintain a large retinue: when the great Germanic tribal confederations were formed, the number of retainers at the courts of such powerful kings increased; during the Migration Period it often became customary for the sons of kings to serve for a time as retainers of a friendly king.

c) In the system of allegiance there is thus a root cause of the later life and work.

VII. RecognizationandstraftofthegermanicRecognization

1. Court judgement: The court was the assembly of the free people. There were no individual judges or civil servant professional judges.

The court of general jurisdiction was the court assembly of the district, which all freemen had to attend.

The Landsgemeinde only passed judgement on very serious crimes that were directed against the people as a whole.

I£eoazetcbnend gerzaaatacb 1st, daB 9Jcbter uad fJrtellsbader **atcbt (wte bel** ua8) are **the** same **person.**

a) The judge presided over the hearing and pronounced the judgement, asking the congregation what was right in the case in question.

b) The judgement was made by the entire court assembly, the so-called "circumstance", which approved or rejected a proposed ruling by applause or rejection. The proposal was generally made by a "knowledgeable man" who was particularly respected for his legal expertise. Among the Frisians, this was called "Asega".

2. The course of law: The Germanic process was based on the principle of party defence. It was not the state but the parties who conducted the proceedings, both in civil and criminal matters. There was no difference between civil and criminal proceedings. The figure of the public prosecutor was absent. The injured party or his clan brought charges themselves.

a) The proceedings are initiated by the plaintiff's summoning of the defendant. A state summons was not issued. Rather, the plaintiff went to the defendant's house and summoned him to court in a ceremonial manner.
b) The defendant was obliged to appear. Failure to appear was regarded as a denial of justice and originally resulted in a declaration of no contest. Failure to appear despite having been summoned meant an obligation to pay a fine.
c) Astherhousetheraccountionand "contempt of court" {the term is still used in English law today) rendered them peaceless.
d) A failure to appear was developed early on. The absence was established when the sun went down and, if the defendant failed to respond to repeated summonses, the plaintiff's claim was recognised.

Extraordinary proceedings took place in the event of an offence being committed. The perpetrator caught in the act could be killed immediately if the victim had made the "plea", which the neighbours had to follow, because his deed had made him peaceless.

a) In this case, however, the lawful killer had to raise the "complaint against the dead man", in which he proved the lawful killing.

   Somewhat later, the principle developed that the injured party did not kill the wrongdoer immediately, but brought him to court with his neighbours ("Schreimannen") and had him tried there. If the wrongdoer was caught in the act, he was excluded from the evidence of the oath.
b) Different from the "lawsuit against the dead man" was the "Klage with the dead man"; the members of the clan of a slain man brought the dead man to court (resp.

a severed hand: "lamentation with the dead hand"}, to lodge **a complaint** in a solemn form against the manslayer or murderer.

The gezzaaotscbe proze8foraial1szan8:

a} The conservation of Germanic law was public and oral.

b) Only the partei themselves could appear in court. All representation was initially excluded, and it was only very late that we find court representatives among the North Germanic peoples (IcelandJ.

c) Klage and Klagantwort had to be presented in solemn formulae handed down from time immemorial, the meaning of which was clearly established "J.

dJ Formfernis: The strictness of form became more and more stringent in Germanic law, so that at times any misunderstanding of a procedural formula led to a disadvantage in the proceedings ("one man - one word "J; thus it developed in the early Middle Ages that behind each party there was a man who mastered the formulae and approved them {"intercessor"); later the relationship was reversed: the advocate speaks for his party, but the latter must approve every single declaration of the advocate and has the opportunity to improve and change false declarations in this way. (Root of the legal profession.J

In Germanic law, resistance to any modification or improvement of procedural declarations was particularly long-lasting and fierce ("a man's word should not be twisted and interpreted").

e) Treation: In order to initiate a lawsuit, the parties had to conclude an agreement with each other that they would submit a dispute to a court decision. Refusal to enter into such an agreement was considered a denial of justice and rendered the parties peaceless.

'-) Reason: the young and still cumbersome Germanic law wanted to create very clear conditions under all circumstances; it did not yet dare to deal with complicated facts, but only offered a sufficient set of formulae for normal circumstances, with which one had to make do. It had the disadvantage that special cases could easily not be treated accordingly, but the great advantage that the decision was simplified. A certain interpretation of the formulae was certainly possible. In addition, since the court proceedings were deeply embedded in the entire religious world view of the people, the use of solemn forms was particularly obvious.

t) Conservation and determination took place after the conclusion of this dispute agreement. If it turned out that evidence had to be taken on a fact, the judge did not take it.

8) The parties concluded a settlement agreement. The evidence was not provided to the court, but to the opposing party.

h) There were l:

The oath,
the witnesses,
the judgement of God.

aa) The Eid was rarely just a party oath; for all the more important cases In addition to the party, a number of their clan members had to swear that the oath was "pure and not mine". In other words, the oath-helpers did not testify that the facts claimed by their party were true, but that their party was worthy of belief and trust.

bb) The countries are only competentations or companies.

The ceremonies were held at every ceremonial act. (marriage, adoption of a child, setting a border), and as much as possible.

Gemendercess testified that a right, a custom, even an authorisation to use the land had existed since time immemorial, according to "the oldest people's customs".

Germanic law, on the other hand, did not recognise accidental witnesses and did not allow them.

cc) In Germanic law, the Godtesurteil had to be used when the purpose of the trial, to achieve complete clarity, could not be achieved in any other way. Purpose of the It was the judge's task to determine what was right in a particular case. If this could not be determined because, for example, the same number of witnesses on both sides swore to their party's cause and other evidence failed, the gods themselves had to decide and let the "better man" win.

In this case, the parties concluded a "Kampf-gedinge", a contract to settle their dispute by duel. Whoever won the duel also won the legal dispute. There were no other divine judgements in Germanic times before the introduction of Christianity[1]).

i The judgement was pronounced before the assembled Thing at the end of the hearing of evidence.

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[1] The possibility of using paid professional lawyers to defend their cause in court battles developed late, probably initially for minors, women and old people who lacked a defender of their rights from their own clan. The reputation of these professional lawyers was always low.

k) Therespection: Not only each party, but also every third party had the opportunity to appeal against the judgement. This had to be done immediately, before the court community had announced its approval of the judgement.

The judgement scolding contained the accusation of dishonour against the judgement finder. As this accusation was an affront to honour, it led to an immediate conflict between the judgement scold and the judgement finder.

The refusal to fulfil the judgement without at the same time divorcing the judgement resulted in peacelessness.

3. Tell

Roman law

Of all the rights of the other Indo-European peoples, the law of the Romans had the strongest influence on our law in later times. It must therefore be described in its basic features.

A. The old law

t. The Romans belong to a group of Indo-Germanic peasant peoples {Itallic peoplesJ who first appeared in Italy around 1900 BC. The city of Rome is thought to have been founded in 753 BC. Racially, this early Romanity was largely Nordic. It was first under kings (753-5t0); after the expulsion of the last king Tarquinius Superbus, Rome became a republic. At the head of the state was the senat; two konsuls were elected for a one-year term each and exercised the power formerly vested in the kings. The history of Rome is filled with the internal struggles for the equality of the peasants with the peasants and the conquest of first Italy and then the Mediterranean by the Roman people.

2. The law of the oldest R8mer did not initially differ significantly from the rights of other Indo-European peasant peoples.

a) The Sippe: The oldest Romans also belonged to sip- pes (gensJ ¡ the individual clan member exercised the three civil rights: "commercium" {right to trade and make contracts),
"connubium" (right to marry a Roman womanJ, "suflragium"
{right to vote passively and actively for the offices) only by virtue of his clan affiliation.

b) The land law corresponded to early Indo-Germanic law: the farm, site and garden were not freely owned, but were tied to a particular gender and could therefore neither be sold nor freely inherited. The farm was called "fami-lia"; it was inherited by only one son or agnate. In addition to the farm, there was common land in which the community citizens, the "house fathers" (patres, hence patricians) had a share. This communal land was called ager publicus.

c) The staatesorganisation was simple. At the head of the state was the king {RexJ as judge, ruler and commander of the army. (His religious functions were so important that even after the abolition of kingship, a special "sacrificial king" [Rex sacrificulus] was created to fulfil his priestly duties.J The king was assisted by a senat (council of eldersJ, in which the patres (house fathers) sat.

Only the patricians were the first and true Romans. They owned slaves.

d} The cients: Through the release of slaves to semi-freedom, through the surrender of strangers (members of subjugated cities) to the protection of a Roman as a "patronus", a broad class of people emerged who had an intermediate position between free and slave, the group of clients.

The client stood above the slave, for he could acquire legal property and his marriage was considered a marriage in the legal sense; he could also have slaves of his own. However, he was not equal to the free man, his patronus had to represent him in court, his family did not form a clan in the legal sense, he therefore had no share in the ager publicus, he was a man without a clan, only as a protector did he belong to a patrician clan (gens).

B. The emergence of the plebe)er and the collapse of the **Slppenstaat.**

t. Increase in the number of clients. The number of such clients increased more and more. With the admission of large numbers of such strangers, who placed themselves under the protection of a single patrician, the rights of the patronus weakened more and more. The client began to rise from a passive member of the community, who could only be represented by the patron, to an active member.

2. **Veraiebruag** of the E'rezadea. On "IJnterververfungsver-trag", as personally free people, but forced to resettle in Rome, citizens who had been subjugated by the Romans came to Rome.

of the neighbouring Italian provinces to Rome. In many cases, these no longer had any protective relationship with a patron.

They remained free, in the Roman legal sense {as they did not belong to any "gens" belonged toJ clannish people.

They were joined by the mass of foreigners who, attracted by the rise of Rome, settled there.

They were all individual people - in contrast to the ancient Roman, the patrician, who was bound to his clan: Privatleute "J.

Because of their numbers, this population, which soon outnumbered the patricians, was called plebeians (from plebs - the people).

3. The rise of plebeian citizenship took place gradually. First, their property was recognised, apparently tacitly, as genuine Roman property, their marriage as a legal Roman marriage. This recognition of the plebeians' private legal capacity already meant their recognition as citizens, albeit as citizens of inferior rights. If the plebeian had become the patrician's legal comrade in the field of private law, he now struggled to become his legal equal in the field of constitutional law.

Slppenelgentum was the successor to Prlvatelgentum: the clan-based rights of the patricians were the first to be shattered by this. For a time, the free private property of the plebeian private citizen stood alongside the inalienable, gender-bound property of the patrician. Then free separate property prevailed and the patricians' fields became marketable.

Servlian constitution: In the Servian constitution (of King Servius Tullius), the duties of the state, military service and taxation were already extended to the plebeians, and rights in the state were no longer determined according to origin but according to ability.

Voting in the municipality was carried out by the centuriate committees, in which patricians and plebeians were categorised according to their tax contributions - no longer in the clan assemblies (curia committees). The clan comrade, who alone was a full citizen in ancient Rome (the cluirite from curia - clan assembly), was replaced by the Roman citizen (civis RomanusJ.

'-) Racially, the mass of this population will hardly have differed from the Pa- tricans; they were also Italians of North Asian-West Asian racial origin.

After the fall of the **2f6olgtum** (510), the plebeians were only concerned with gaining the offices that the patriarchs had reserved for themselves"}.

4. The abolition of the Rbeschraoke zwtscbezt Patrtxtera "ad Pte- be}ern. In 445, the tribune Canuleius enforced the law that marriages between patricians and plebeians were valid - the children now followed the status of their father {no longer "of the stronger hand"}.

I. From the unhistoric right of the slaves to bourgeois law With the increasing equality of the plebeians with the pa triziem, the previous unwritten, closely related to the old The law, which is bound to the gender state and only applied by patricians, is unacceptable.

Twelve tables: Their assessment: In 451, the Decemvires were established to record laws. The decemvires established by them became the source of Roman public and private law.

The twelve-table laws still bore much of the character of the old clan state {no will, inheritance for the familia is the next agnate, harsh debt law in which several creditors could cut the insolvent debtor into pieces, "if they cut off more or less, it shall be their own pity", formal rigour, only a few legal transactions}. Ackerbürgerrecht: As ancient as this twelve-table law may have seemed, it was already the civil law of the Roman citizen, still closely bound to the nation, rigid, difficult to fulfil, but nevertheless based on the principle of property and the

The company has built up a strong reputation.

For a long time, the trial formulae were kept secret by the patrician priests and only made known in individual cases, as was the list of days authorised for judicial acts. (A number of days were considered unlucky and court acts were not allowed to be carried out on them). This secret science of lawsuits and court days still gave the patricians a certain superiority over the plebeians until they too were published.

'-) They succeeded in doing this step by step. First, some of their members, albeit with fewer internal rights, entered the Senate as "appointed fathers" {patree conseripti). Then they achieved the appointment of tribunes of the people to protect their rights (d93l, extend their rightsi 360 the first plebeian consul, 351 the first plebeian censor, 337 pr8tor¡ he patriarchal families held the priestly dignities for the longest time.

II. From municipal civil law to world civil law

Rome's expansion of power: The conquest of **Italy,** and then **the** Mediterranean, greatly expanded Roman power. The Romans now became administrative officials, professional politicians, merchants and, above all, large landowners.

Decline of the peasantry: In the wars against Carthage, especially in the Second Punic War (218-201 BCE), the Roman peasantry largely perished, selling their land to rich families who used it as large estates with slaves.

(Tacitus: "The Latifundia have ruined Italy").

But the city of Rome grew. The number of non-Romans accumulating in it became ever greater; these people rented flats, concluded contracts of sale, practised law on a daily basis - it was necessary to create a special jurisdiction for them. The praetor peregrinus was appointed for this purpose.

III. The double development of rights

The development of the Roman peace process now followed two paths:

1. **Roman citizens** were subject to jus civile (literally: civil lawJ, i.e. the twelve-table law. This law, created for the needs of an agricultural town, was no longer sufficient for the cosmopolitan city of Rome and its business needs. However, instead of closing the "gaps" in the twelve-table law (which **had** once **been** sufficient and had only become outdated due to development) with an ever new patchwork of laws, the Romans ingeniously developed the art of regulation. From very specific provisions, the Romans skilfully developed far-reaching legal possibilities, sharply formulated concepts").

'-) Latifundium is an estate of very large size; latifundia formation is the unification of smaller estates into estate complexes.

'--) An example: According to the twelve-table law, the son was under the guardianship of the father as long as the father lived. This may have been acceptable at the time of the small farming town, but it became absurd in the modern cosmopolitan city. Now, however, the Romans did not abolish these provisions, but rather provided a way out. The twelve-table laws contained a provision: if the father had sold the son into slavery three times (and the son had returned), then the son was to be free. This was originally a protective provision against the abuse of rights by ravenous fathers. Now, in order to free the son from the father's guardianship, the Romans had the father sell his son to a friend three times in succession; the friend immediately released the son each time - the The whole release was completed in an hour.

2. Amongst foreigners, the foreign praetor now developed a legal he himself was Roman and came from the world of the twelve-table law, which had been further developed by interpretation. The people who litigated before him (Gauls, Greeks, Punic, and finally also Germanic tribes) brought their own legal concepts with them, which contradicted each other. Here, the foreign praetor sought step by step to find the right law in the nature of the direction - always based on his own Roman legal concepts
to find. So he tried to clarify: What is a lease, what is a contract of sale? He came up with generally valid concepts of private law.

3. The parallels: Jus civile and Fremden-recht ("Jus gentium") thus ran side by side, influencing and interpenetrating each other. The jus gentium was the stronger. It was also Roman law, but adapted and developed for the needs of people from very different nations. According to the jus civile, only Roman citizens could deal with each other - the more flexible, freer jus gentium, which was closer to the individual offence, applied between foreigners and between foreigners and Roman citizens.

4. The merger: Three forces worked on the merger of these two rights: The president, the government and the caiserlical government.

a) The praetor was the highest Roman court official.

aa) The edict: When he took office, he used to publicly announce the principles he intended to apply in his administration "so that the citizens would know what kind of law he would let speak in every matter"}.

Usually, a praetor adopted the legal principles of his predecessor (overl evedictJ, but he could add to them. This meant that new legal ideas were constantly being introduced.

bb) The pretors: There were two praetors, the city praetor (praetor urbanus), only for the Roman citizens, and the foreign praetor (praetor peregrinusJ. The edict of the city praetor became increasingly similar to the edict of the foreign praetor. The use of the courts thus developed the law in the sense of a generally cosmopolitan law of equity, but always carefully and gradually.

When the Caise Republic replaced the Roman Republic, the emperor also took over the further development of the law. Caiser

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") The praetor himself did not judge, but instructed the judge that if the case turned out the way the plaintiff presented it, it should be decided one way or the other.

Hadrian had the edicts {of the city praetor and the foreign praetor} issued at the same time. The edict was now finalised.

The edication of the edict: However, there was now a danger that the application and interpretation of the edict would lead to a divergence in jurisdiction and the development of different judicial practices. Thus the emperor ordered that where the edict left doubt, he himself should be consulted. He reserved the right to make additions to the edict himself.

b) Roman jurisprudence: Rome was already familiar with individual academic works on legal issues at an early stage "J.

The cally privided Jurists: The Emperor Augustus had already given individual jurists the privilege of having the authority of an imperial interpretation of the law given by them for an individual case - the judge therefore had to judge according to such an opinion unless a counter-opinion was submitted by an equally privileged jurist. These opinions were soon collected (Responsen-Literature)i-).

The classic Jurisprudence: Emperor Hadrian's provision that, in cases of doubt, the interpretation of the edict should be referred to him worked in favour of the privileged jurists.

It was from the circle of these jurists that those men emerged who summarised Roman law in its various parts, the twelve-table law in its further development by the city praetor, the law of aliens in its further development by the aliens praetor, the results of jurisprudence and imperial legislation as well as the opinions of the privileged jurists'°).

'-) The consul Sextus Ailiu8 Paetus the "Clever" (m "Catue"} published a commentary in three parts on the law of the Twelve Tables in 198 B.C., the erate book of legal content, Qu. Mucius Scaevola (100 v. d. Ztr.J wrote a textbook of civil law in 18 parts. Soon there were also summaries of the law, including the famous die "Institutions of Gajus".

'-) Within Roman jurisprudence at that time there was a rather fierce dispute between two schools, the Sabinians and the Proeulians, which we are no longer able to survey in detail.

--The most important of these jurists are: Publius Juventius Celsus (died under Hadrian), Salviua Julianua (who wrote 90 books on law), his pupil Sextus Pomponiua and the aforementioned Gaju8 {d. 180 a. d. Ctr.), the first author of a legal textbooka. Then Aemiliua Papinianus, his pupil Domitius Ulpianus, Julius Paulus and Ulpian's pupil Herenniua Modeatinus.

The origins of some of these great jurists were no longer Roman by blood; the most important ones were non-Roman. Papinianus came from the Orient, Ulpianus was Syrian, Modestinus came from the Greek half of the empire.

Charact of Classic Jurisprudence: The classical jurisprudence of Rome is a tremendous achievement in itself. In many cases, the great jurists worked out the concepts with ultimate clarity. In the process, all national restrictions and ties were lost. Roman law in the hands of these great jurists is the world law of a world; it hardly recognises any differences of blood, but only " the declaration of will", the "tenant", the "buyer", whose legally relevant will was assumed to be the same in all nations and under all heavenly astrologies.

The difference of classic Jurisprudence lay in the fact that the jurists often contradicted each other, that no authority was actually in possession of all, even the most authoritative legal writings. As a result, jurisprudence often bypassed the accumulated treasures of legal thought.

3. **The** development of the **law of Caliphate:** Towards the end of the Roman Empire, imperial power, which had become increasingly absolute and unrestricted, usurped leadership. Economic life changed (the monetary economy declined, the natural economy advanced), provinces were lost to Germanic tribes and other foreign peoples, a salaried civil service and mercenary army were developed, public legal claims increased, and imperial legislation had to regulate many things anew. From Diocletian onwards in particular, there was a flood of imperial decrees and laws alongside the law previously dealt with by the great Jews.

Summarising the law was necessary: Nobody could find their way through the flood of legal writings and imperial decrees.

a) The ZlHer law: In the year 426 A.D. Ctr., Emperor Valentinian III decreed that only the writings of Papinianus, Paulus, Ulpianus, Gaius and Modestinus, as well as the writings of all those who were quoted by them, could be used to justify judgements. However, the judge was bound by the opinion of these jurists. If the writings of the jurists contradicted each other, the majority of votes was to decide; in the event of a tie, Papinian's opinion was to prevail.

decide at their own discretion. This was a rather helpless attempt to limit the flood of legal writings.

b) **The** Corpuø **)urls:** It was Emperor Iustinian (527-565) who, together with his Chancellor Tribonian and the two professors Dorotheus and Theophilus, had the compilation of Roman law drawn up that we know as the "Corpus juris Justiniani")).

Elnstellung des Corpuø]urls: The Corpus juris consists of:

4 books - these represent a concise textbook of the law as it should apply from now on.

50 Bücher Digesten or Pandects. They contain the main part of the work, the harmonised declarations of the great jurists on Roman law.

12 Bücher Codex. They contain a collection of individual imperial decisions and decrees, which were also harmonised with each other.

Novellen. Emperor Justinian finally appended his own decrees to the work as novellas.

Significance of the Corpus]urlø: The jurists of Emperor Justinian were still in a position to master and organise the entire body of existing Roman law. They were not below the material, but above it. They drew the final conclusions from Roman law "J.

-') The Corpus juris was compiled from the entire body of existing law, in particular from the writings of the great jurists and **the** imperial decrees and **laws,** by several commissions in three sections in such a way that each commission received a specific group of writings and now made extracts for the individual legal matters (e.g. rent, guardianship law, matrimonial law, etc.). These extracts were compiled, and the one or other comment that seemed important was inserted from writings that had been overlooked until then.

Real harmony was largely achieved through "interpolations", i.e. by interposing explanations and balancing conflicting opinions.

^) What Sohm ("Institutions of Roman Law") says applies here:
"Justinian's councillors and professors were still able to read the great jurists and excerpt the meaning. In their Corpus juris
alone is the glory of Roman law visible, the glory that only needed to show itself to make the world its own.
feet. In Justinian's Corpus juris, and in it alone, the masterpiece of Roman jurisprudence has been preserved and saved for the future ... This, then, was the great work that Justinian completed with his Corpus juris: The work of art of £Ö1Dl-
The law had its final conclusion and at the same time a
summarising form that saved it from ruin.
Now the Roman state could perish, Roman law was in a position to outlast the Roman Empire."

On the other hand, there are the serious dangers that this right must have harboured for a young peasant people: as the right of a despotically governed state with few national ties, already very alien to the peoples of northern and central Europe, as a right of private individuals, it had characteristics which, if introduced unprepared, could severely harm peoples who were closer to the level of ancient Aryan law.

4. Tell.

The leather breakage of Germanic law

1. Assessment

A thorough examination of Germanic and Roman law

1. Despite the close proximity and frequent contact between the Romans and the Germanic tribes, there was evidently no influence of Roman law on the Germanic tribes in the period between the first contact between the Romans and the Germanic tribes and the Migration Period'}.

2. The conquest of further Roman landscapes by Ger- man peoples during the Migration Period forced the Ger- man rulers to deal with the same problem as Emperor Justinian in Byzantium: the disorganisation and fragmentation of Roman law, which was scattered in the legal writings and imperial decrees.

3. Establishment of Germanic law by Germanic rulers. "Everyone carries his tribal law with him" was the principle of Germanic law. They also applied it to the Roman population. They must therefore have wished to have this right of the Romans established under their rule. This explains the summaries of Roman law for Romans by Germanic kings of the Migration Period, namely

a) The Edictum Theodorici (issued by the Ostrogoth king Theoderieh the Great for Italy between 511 and 515). It is a poor attempt to summarise a few basic features of Roman law, tinged with Germanic legal concepts, in poorly written Latin.

b) The Lez Romana Burgundionum (dea Burgundian King Gundobad), also known as "Papian" (not even the real name of the8 great jurist Papinian was known anymore1).

--From the cruelties of the Germanic tribes against captured Roman lawyers after the Battle of the Teutoburg Forest, one can rather conclude that Roman law seemed particularly strange and hostile to the Germanic tribes at that time.

This law book, written in a desolate provincial Latin, working only partially with Roman models and substantially influenced by Burgundian law, is only a poor fragment of Roman legal knowledge"}.

cJ The Lex Romana Wiaigothorum, also known as the "Breviarium Ala- rici", compiled on the orders of the Visigoth King Alaric II in Spain in **506.** The Visigoths themselves were gifted in legal matters, and they also found much better Roman assistants in Spain, which had suffered little devastation. Thisa work thus considerably surpasses the compilations of Roman law by the other two Ger- man kings. It also contains a number of well-known jurists, but is essentially based on later Kai8er decrees and on the textbook of Gaius (originally intended for students1). It contains only a single passage from Papinian - in honour at the end l

The work as such is not even bad, but compared to the impressive mastery of the entire legal material by the jurists of Emperor Justinian, what the Roman jurists of the Visigothic king together with the Gothic experts have delivered here is a diligent but poor student's work).

4. The influence of Roman law on the Germanic peoples of the Migration Period: The influsion of the Romic Receiver to the Receive Romic Receives (Ostrogoths, Visigoths, Vandals, Lombards, BurgundiansJ is not to be dealt with here.

The impact of the Roman Empire on the Germanic peoples who remained in the old homeland or only annexed conquered Roman territory {Franken, Schwaben, BayernJ was initially very small, as long as the blood barrier between the two peoples was in place and the Germanic peoples applied their (Frankish, Swabian, Bavarian) tribal law as a matter of course; the remaining Roman population lived according to their own law.

--Sohm says: "We see a Roman law which has saved only the coarsest of the material, but has lost everything that signifies art of treatment, beauty of form, richness of ideas, in the great conflagration of the migration of peoples. An unsightly, smoke-blackened, mutilated Torah remained" - the blame for this lies not with the two Germanic kings, but with the fact that the existing Roman legal experts were no longer able to master the material themselves.

-°) After all, while the army compilations of Roman law by Theodoric and Gundobad disappeared with the end of their empires, the "Breviarlum Alarici" spread silently from Spain to Germany as the tribal law of the Romans under Germanic rule. In the early Middle Ages we find that it was taught as Roman tribal law in German monastic schools: in Churraetia it was long regarded as Roman law before the Pandect law arrived there much later.

2. Assessment

The addition of the gerzaaoJscaea Becbtes la dec tent of the **Cbztsfiaatsfezuag**

In the Reich of the Franks, the Merovingian Chlodwig (48M511) united the Frankish principalities under his rule.

He conquered the last Roman possession in Gal-lien, the governorship of Syagrius, and in 496 he converted his new Roman subjects to the Catholic faith and induced his Franks to convert to this faith as well.

A. **The** transformation of the people's state into the unrestricted royal state.

Root of the feudal system: In the previously Roman territory, large imperial domains (tax-free fiscal land) had fallen into the hands of Clovis. The king did not give these large estates to the sons of Frankish yeomen (to create new odal farms), but instead lent them to his personal favourites (Franks and Romans).

This bestowal was made as a royal favour (beneficium), which could be revoked at any time.

The king could therefore reclaim this property at any time, or at least it would revert if the king decided that the borrower had made himself unworthy of the favour.

Feudum {from feod - "cattle property", movable property} was the name given to such property, which for the first time in the history of Germanic law was not linked to inheritance in the family but to the favour of the king, in contrast to the
"Odal". Hence the word: feudality, feudal.

2. fief and vassalage: The king only granted such "fiefs" to people who pledged a special loyalty to him in return. This relationship of loyalty was called "vassalage"
{from the Celtic word vassus == vassal). In the case of vassalage, the vassal committed himself to the lord by swearing an oath of allegiance ("Hulde") and a symbolic act (by placing his folded hands in the hands of the feudal lord: commendatio) to render services to the feudal lord that were worthy of a free man (military service, honourable service at court and participation in his court days).

The vassalage was (in contrast to the Germanic
The employment contract is irrevocable and for life.

Vasallity and beneficial weses entered into a close relationship. Already under the successors Chlod-

It was customary for those who pledged themselves to vassalage to receive a fief from the king in return, and for those who received a fief to move into the position of vassal.

In this way, the king gained a strong following in the country.

B. C0nlgtum and 2tlrch

The Roman population (who resisted very tenaciously and ultimately only submitted to King Clovis by treaty) was used by the king to support his rule.

Clovis' conversion to Catholic Christianity (the faith of the Romans) brought him into close political contact with the bishops.

The significance of this change of faith: **this** Roman **population** the power of the Frankish kings

a) Support through its **more highly** developed administrative system compared to the franc,

b} Support against the (Arian, i.e. "heretical"} kings of the Visigoths and Burgundians, whose own Roman subjects favoured the Catholic king of the Franks,

c) Support primarily for the suppression of the Franconian yeomen's rights to freedom.

Alongside vassalage, Romanity was therefore the second pillar of Frankish kingship^). It was obvious that the king strove to realise this unrestricted position, which he enjoyed vis-à-vis the Roman population, also vis-à-vis his Franks.

C. The conversion of the Franks and the dissolution of their Germanic law

The king, in order to extend his power and eliminate the old rights of the people, which were a nuisance to him, and the church, in order to gain new believers and income, pursued the Christianisation of the

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•) Beachte: The kingship of Clovis bore a double charakter:

1. Among the Franks, Clovis was king with quite limited rights vis-à-vis his Frankish freeholds, could not make laws (but had to abide by the traditional law of the people), but could not change the tribe's rules of life. The court system, the people's assembly and even the succession to the throne of the ruling dynasty were not based on royal will but on the law of the people.

2. In the conquered Roman territories, he had moved into the ranks of the Roman Catholic Church: the sovereign and patron of the church and in possession of a comparatively highly developed administrative apparatus with cities and cash tax revenues.

Frankish farming communities. This was achieved - with **coercion** and persuasion - by the end of the 7th century AD. Ztr. succeeded.

The consequences for Germanic law were:

1. The basis of Germanic law itself was gone. Law could no longer be derived from the pious order of the world as soon as the world was seen as a vale of tears and a temptation to sin in the sense of the Christian church. The basis of law could then no longer be the people's consciousness, which drew on the law of life, but only the "law of Christ" (the ecclesiastical doctrine) or the orders of the authorities blessed by the Church.

2. Marriage: In the Germanic era, the centrepiece of the recommunity of recommendation, it is no longer seen as serving the production of healthy offspring and the continuation of a meaningful life, but rather, according to Paul's words (1 Corinthians 7:21), it is merely there to "main the humary". Helose status is considered "holy" (1 Corinthians 7:1). The Rassenschranke, the basis of Germanic inheritance law and family law, is not recognised by the Christian church, pride in good origins is considered worldly arrogance").

3. The barrier between three and unirei, which until then had protected the Germanic peasantry from foreign blood mixing, was no longer recognised. The church promotes and desires intermarriage "l.

4. The purpose of the law, as it had existed in Germanic times, to spread and strengthen the good, virtuous life desired by the law of life, was not recognised by the Church. For them, human nobility of a good nature was a
"pagan" concept. Rather, all human nature was considered

-The Church once emphasised the insignificance of the racial barrier: "Here is neither Jew nor Greek, here is neither servant nor free" (Galatians 3:28); people are all "of one blood" (Acts 17:26). For Christianity, the only ancestry that is considered superior to that of all other peoples is the Jewish one. The Jews are the people "from whom salvation comes" (John 4:22). Becoming like them is the purpose of Christian baptism: "But if you are Christ's, then you are Abraham's seed" (Galatians 3:27); the Jews are seen as the people actually loved and favoured by God, to whom it is the Christian's duty to become like, as "spiritual Israel" in terms of their position in relation to God.

--With the conversion we find that in the tombs instead of
of the hitherto uniform finds of almost purely Nordic and Faelic skeletons.
fat now skulls and skeletons of very different racial mix appeared.

as "evil from their youth" (Genesis 8:2 - which may be true for the Jews) and as "produced from sinful seed" {Psalm 51:7}. That the divine could even be embodied in human generations seemed to her to be a sinful idea.

5. The preservation of the homeland, the homeland farm, appeared to the Germanic land law {Odalsrecht) as the highest task. The church rejected this. It taught that man should not love the "thing itself", but rather the "homeland in Jen-seits", the "heavenly fatherland". To go into homelessness already in this life, to cast away the goods of the earth, to leave house and home as a hermit, to sacrifice the "this world" for the sake of the hereafter, seemed to her to be meritorious.

"With the ecclesiastical devaluation of the homeland, however, the Midgard idea was hit right in the heart" (Hans F. K. Günther: "Herkunft und Rassengeschichte der Germanen").

D. The destruction of the yeomanry

The Church taught that worldly goods were to be disregarded in favour of the salvation of the individual soul; the salvation of the soul, however, could only be achieved by following the Church's teachings and performing good works in the ecclesiastical sense. Man could never do enough in this area ("work out your salvation with fear and trembling").

As a result, their demands increased more and more.

1. The previous Germanic burial gift (gift of the most beautiful cotton wool for the man, the most beautiful jewellery for the woman) was transformed into the delivery of these items to the parish church of the deceased (because this gift originally concerned the best cotton wool, it was later called "Heergewäte" in some laws). This gave rise to the "Best-hauptrecht", the transfer of the best inheritance to the church.

2. Tithes: The Germanic gods had not demanded any ongoing levies. The church demanded (on the basis of Moorish law) the payment of a tenth of all agricultural revenue.

This "tent" disintegrated into

the "large tithe", the tenth part of all grain yields, the "small tithe", the tenth part of all yields of wine
berg, Garten and Flachsland,

the "blood tithe" - the tenth part of all newborn (or slaughtered) livestock.

In addition, there were often

the "property tithe": on the conversion of hitherto pagan lands, everyone had to give a tenth of their property to the church for the initial endowment;

where land was cleared and put to labour, the church later demanded that it be made subject to tithing in the same way as the other land.

Consequences: The levy of ten per cent of the gross yield meant that the farmer worked for one year out of ten working years just to maintain the church. At the same time, this meant a heavy burden for the very extensive economy.

The first break-up of the right of odal: If the farmer did not pay the tithe, the church seized his farm without hesitation and took a pledge, having land ceded to it to replace the unpaid tithe. The "pagan right of odals" was not recognised.

3. The forced gift on the bed of shame, the decisive Zerbrecbuzsg des Odalsrecbte8:

al The Church demanded that a testator should leave at least one bequest "for Christ", i.e. for the Church*}. This ecclesiastical claim to segregation

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--This doctrine has been developed in great detail by the Church. The Church Father Augustin demanded (Sermo I de vita et moribuß clericorum 8uorum, cap. III, 4) "to make Christ equal to a son as heir", i.e. to give Christ a son's share in every inheritance. - "If a son should die before the division of the inheritance, his share must also be calculated - and paid to Christ, i.e. to the Church. If he has gone to God, a share is owed to the poor; it is owed to the one to whom he has risen: It is owed to Christ" (Sermo IX, cap. 12, 19, 20).

But also, in the case that the sons live and none has died before, Augustine admonished: "Make a place for Christ among your sons, may the Lord join your family, may he, your Creator, join the number of your sons, may your brother join the number of your sons....If you have two sons, may he be counted as the third; if you have three, may he be counted as the fourth; if you have five, may he be counted as the eighth; if you have ten, may he be the eleventh l I say no more than this: let your Lord take the place of a sonl For whatever you give to the Lord, he will give to you and your sons ..." Here alao Christ (i.e. the church) is to be a co-heir; a special son's portion is to be set apart for him and he is to receive a head portion. This ties in with Paul (Romans 8:17): "Just as we as God's children are co-heirs with Christ in heaven, so Christ should also be our partaker and co-heir in this world." The church father Cyprian came up with the same fruitful idea: "Make Christ a partaker of your earthly possessions, and he will make you a partaker of the kingdom of heaven" {De opere et eleemo- 8ynis cap. 13.)

of a son's share clashed fatally with Germanic odal law.

b) The development here is as follows:

First (among the Lombards and Burgundians) there is a separation of the father; he is given a son's share of the estate, which he is allowed to hand over to the church as a "ransom of his soul".

Later, with the help of the Frankish kings, the Church realises the Crunds'atz that everyone is obliged to give a son's share (or more!) to the Church for the salvation of his soul. Any objection to this by relatives is ruled out.

4. The spread of this breaking of the law of odals: We do not first find the introduction of this law on the bed of the dead in the legal records of the Franks, but among the peoples they subjugated. In keeping with its importance, this is at the beginning of the legislation that the Frankish Empire introduces among the subjugated tribes.

a) The Alamanni, who had already been dependent on the Frankish empire for some time, were forced by Charles Martel from around 717 to 719 to have a summary of their national law, which had been transformed in line with Frankish kingship and the Christian church, drawn up. The forced donation on the deathbed is immediately placed at the beginning of this summary "1.

°°) To show how precisely and deliberately these legal provisions were drafted in order to prevent the yeoman farmers from raising any objection to this forced gift and his heirs from having any legal recourse against it, the provisions are reproduced here (according to the text of "Germanenrechte", Schriften der Akademie für Deutsches Recht Vol. 2, 1934):

"If a suitor wishes to give his property or himself to the church, let no one be authorised to contradict him, neither the duke nor the count nor any person, but let a Christian be permitted to serve God of his own free will and to redeem himself with his own property. And whoever wishes to do this shall make sure by deed of his property to the church where he wishes to give it, and shall call six or seven witnesses, and this deed shall contain their names, and before the priest who ministers at that church he shall lay it on the altar, and the property of that property shall remain with that church for ever.

And if a person who gives, or one of his heirs, wishes hereafter to withdraw this property from that church, or any Man, what kind of **person** would dare to do this, they reached not the success she sought, and all of the judgement of God and the ban of the holy church and pay that penalty which the original

b) With the **Bavarians:** accordingly, when Karl Marte had subdued the Bavarian duke in 11 728, the "Lex Bajuvarorum", which in its first article also decreed the forced donation on the deathbed. It is therefore rightly the prevailing conviction that when the Franks introduced this forced donation on the deathbed among the other tribes, it also applied to them").

5. Consequences of the forced lung on the deathbed:

a) Reduction of the farmland: With every death, the farmland decreases by one son's share, while the church land increases. The principle of the free divisibility of the farm prevailed - so all children demanded and received an equal share of the land.

This resulted in a decrease in farmland, an increase in church land and the emergence of unviable dwarf farms.

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and return that property unharmed and pay peace money to the state as provided by law.

If a suitor gives his property to the church and creates security by deed, as stated above, and then receives it as a loan from the church pastor in order to obtain the necessary maintenance for the days of his life, he shall also pay what he has vowed to the church as interest from that property, and this shall be done by a letter of security, so that after his departure none of the heirs may object.

And if it so happens that after the death of him who gave that bequest a son remains, and that son may wish to say that the paternal inheritance is legally his property, and that his father did not give it nor provide security for it, he shall not be permitted to swear, but this deed which his father made out shall be produced, and those witnesses who laid their hands on the deed shall, together with the priest of the church, testify, as the law provides, that they themselves were present and saw with their eyes and heard with their ears that his father gave that property to the church and issued a deed and called them as witnesses. They should testify to this under oath: 'As true as we are true witnesses'. According to this, the church shepherd owns this property and the presumptuous person who contradicted it pays the penalty contained in the deed to the church."

-') The earliest provisions on the destruction of odal rights among the Franks have not been preserved. Only an imperial law of Emperor Louis the Roman of the year 818119 with the inscription "That every free man has the power, where he wishes, to grant his property for the salvation of his soul" shows us an already late development in this area. This law still recognises a legal status in which the property could only be sold in the county itself or on the court hill. This formal provision could now be disregarded and the donation could be made anywhere,

"be it in the army, be it at the royal court, be it anywhere else". The count was instructed to break the heirs' objections to such a gift.

b) **H0rlgkelt:** Such farmers' sons with too little land turn to

1. To the royal vassals with a request for land.

Since the vassal himself only owned his land on revocation, he could not to the farmer's son only on revocation. He demanded that he pay tribute to him as a servant. Odalsrecht, but likewise from the Preibauernaohn, that would give, Prondienst, Scharwerke and

2. To the church.

According to church law, the church could not sell any land, case8 she didn't get anything of equal value in return. The farmer had given her this

aohn could not offer. So she also gave him the land only if he is a slave to of the Frondienaten and Scharwerken and confessed himself de8 to God's house.

3. 'To the King.

The Frankish king, who had an interest in **reducing** the number of yeomen as the **bearers of the** people's rights, only gave land if the yeoman committed himself to labour and servitude.

Event: A social reorganisation of the greatest magnitude thus developed in the Frankish Empire:

The king, the church and the royal vassals acquired large estates. These soon only added farmland to the sons of peasants if they "assigned" their still free share of land to the new feudal lord and took it back from him as dependent service property (precarium).

B. The cattlclduzzg of the stttade

1. The **freemen:** The Edelings: The old Germanic nobility of birth disappears completely in the Frankish Empire (apart from the Frisians), as its legal and moral basis, the appeal to particularly good descent, is of no value before the Christian doctrine. It was replaced by a new dienstadel.

It is formed through membership of the royal retinue or the royal court service. It is true that it is predominantly people of peasant origin who enter this service, but freemen and Romans are also accepted.

The large landowners become a favoured class early on, but not in legal terms, because they do not receive a higher value payment (as the members of the royal retinue receive three times the value payment of the other landowners).

-) Communities that resisted such a development were called up for **military service** on the distant borders of the empire until, having become economically weary, they "surrendered" their land to a great man or the church and took it back from them as a loan, in return for which they were relieved of their military service obligations.

They were not given freeholds), but the size and wealth of their owners and their landlordly rights gave them a favoured position compared to the dependent peasants. Together with the clergy and the servant nobility, they formed a class early on that was referred to as the "high nobility".

The communities are the remaining independent yeoman farmers; in some areas they have almost completely disappeared, in others they are more numerous.

2. The "Mtnder-Freie" are those freemen who have already endured restrictions on their freedom (e.g. the "Bar- schalke" of Bavarian law, who are still completely free for their small old free portion, but have already added church or manorial land. They are therefore half "bar" == free, half "Schalk" i.e. servant.

In the course of time, this class suffers such a diminution of its personal and political rights that it comes ever closer to the serfs.

3. The semi-free in the old sense (lites) stand between the free and the unfree. They differed from the freemen in that they received less money, some of which went to their lord, they lacked freedom of movement and were obliged to pay a personal protection fee. They differ from the unfree in their ability to earn money, take oaths and stand trial.

4. The Antreten: On the one hand, the number of unfree men increased as the yeomanry of the time fell into bondage. However, a distinction was now made between different classes of unfree.

aJ The royal court (Pueri regis) : Freemen who were entrusted with royal court offices; accordingly, the freemen were of higher rank at the court of a great man. They had a salary that was almost equal to that of the lites. They often went to war on behalf of their lord.

b) The noble baurers : They were entrusted with certain pieces of land for independent cultivation, usually their old paternal property, which they had transferred to the church or a great man and had to take back as a loan. They were obliged to work and provide services for the lord, were tied to the land and could only be sold together with the property. Within this framework, however, they were able to realise assets.

c) The sclaves : The non-settled unfree were the personal property of a lord and could be bought and sold freely.

5. The slave trade: With the collapse of the Germanic peasantry and the increase in bondage, Jewish slave traders were found in the Frankish Empire to buy and sell such unfree people.

Jddlßche slave traders: The Juden were a group with special rights in the Frankish empire. They were the only non-christians allowed to practise their religion; they were protected by the king8. The Merovingians were less likely to favour the Jews than the House Kings (Charles Martel, Pipin) and finally Emperor Charles. Restrictive legislation against the Jews only existed insofar as a certain separation from the Christian population was attempted for reasons of religious policy.

6. The enfranchisement of the unfree was possible in the Frankish Empire. The form of enfranchisement was either according to Roman or Germanic law. The main forms of pre-release were:

a) Responsibilition: The person to be ransomed appeared before the king together with his previous lord and offered his previous lord an interest payment (denarius). The lord then knocked it out of his hand as a sign that he renounced further interest payments and thus also the obligation to pay interest. Such a person who had been granted the prize was equal to the freeborn and also had the value money of the free. However, only his freeborn children were considered his heirs.

b) Freeishing through responsibilities (carta): The previous lord gave the person to be freed a letter of freedom; this gave him the legal status of the Romans. If he died childless, the inheritance and the money went to the king.

c) Freishing in the Chirch: The church enforced that only the handing over of the person to be released to the bishop before the altar together with the presentation of a licence (tabulal) was considered meritorious before God. Such freedmen were not completely free, however, but were left to the protection of the church; they had to pay taxes in return").

--The church, however, was "prevented" by canon law from completely releasing such an unfree person (tabulariua). Rather, he was in hereditary dependence on the church, was liable to it in court and subject to customs duties. In this way, it obtained a large number of semi-free men who were obliged to provide at least certain services.

{The Church was obliged to pay interest. Should someone really decide to release an unfree person without "recommending" him to the Church in this way, the Council of Toledo (633 AD) demands for the entire Western Church that the "manumissioner should release two slaves".

same value urul equal peculium (slave property) of the church as gäbe".

Replacement This became established early on in the Frankish Empire.

3. Assessment

State organisation and administration in the Frankish belch

A. Kõnigtum

1. Among the Franks, the throne belonged to the Mero dynasty; the respective ruler, however, was chosen by

- determined by **popular vote.** Women were excluded from the succession to the throne. From Chlodwlg onwards, popular election was abolished and the crown was vested in a male stam ; if there were several male heirs, the kingdom remained a single entity but was divided into several parts, each of which had a king. In such cases, the church was in reality the only unifying factor.

2. In the Merovingian period, the seizure of the throne was followed by the overthrow of the country and the establishment of the monarchy. The royal power expanded more and more from Clovis onwards. The popular assembly of the free men was transformed into a military show (March Field, later May Field). The power of the people was transferred to the king. The king acquired the right to bring any case before his royal court. The royal court was originally presided over by the king himself, then by the Count Palatine.

3. A h6nlgIlches civil service was developed, namely:

a) Howbeamte : The warden who was in charge of the castle and the treasure, the seneschall (senex scalcus - originally "old servant"), who was at the king's disposal, the truchseß {chief cook), the mar-schall (originally mare scalcus m horse servant), who was in charge of the royal horses, then also of the mounted retinue.

b) The majordomo was originally a court official, indeed, his office was derived from that of seneschal; however, during the divisions of the realm under Clovis' successors, powerful families in the individual parts of the realm took over this office, which ultimately encompassed the control of the entire royal household and the actual management of the administration.

B. D1e **Betcbsverwaltang**

Originally, under the Merovingians, the president was an assessor of the royal court who attended the proceedings as a documentary person; his main task was to sign the royal diplomas with his name.

Under the Carolingians, he became deputy chairman of the royal court. The court clerk's office established at this time was placed under the control of the Count Palatine and the court clerk was responsible for certifying the documents. The introduction of the court clerk's office was based on the influence of the Ripuarian court clerk system, which, however, fell into disrepair everywhere around the middle of the 12th century.

The Erzkaplan had supervision over the clergy at court and over the chapel system, because the clerks were mostly of clerical rank.

I. The region of the freencial community of Königs

1. Since Clovis, the **title of** the king had been "Rex Francorum" i since his coronation as emperor in 800, Emperor Karl "Imperator Augustus".

Pipin was the first to be anointed by the church (an ancient Jewish custom) after the deposition of the rightful Merovingian king in 754 to establish his rule. During the Merovingian period, the king wore the long headdress, army banner and holy lance. In the Carolingian period, the crown, sceptre, sword and cross were added.

2. The scope of national power: Since Clovis, the king (unlike in ancient Germanic times) was the bearer of the highest state power. The Germanic state was a people's state, the people were the bearers of state power and transferred it to the king. Among his Franks, Clovis was still a people's king in this sense. In the Roman territory he conquered, he had usurped the powers of the Roman emperors.

At his coronation, Pipln had explicitly based his right on the anointing by the Pope. Since then, the royal dignity was regarded as "bestowed by God" and the king as the holder of supreme state power. Since then, he has also been able to create new law through the law of the people.

The king had the following powers: he governed

the state in war and peace.

He was authorised to call up conscripts for military service. In the event of enemy invasions there was a general conscription, anyone who did not obey a royal summons was subject to the king's ban and desertion (heresliz) was punishable by death.

The king possessed the power of judgement. He could issue an order on pain of punishment, and anyone who defied the order was to be put to death. The royal ban in the sense of a punishment was 60 aolidi (shillings). Emperor Charles then increased this royal ban against the Saxons to 1000 solidl. The king was able to transfer this ban.

The royal ban was either: a ban that gave the **king's** orders greater force, or a ban that placed territories, objects or localities under special royal protection.

The ban gave the king the opportunity to continue the development of the law, originally only in accordance with the law of the people, but later also in addition to and amendment of it.

II. The freencial communication responsibility

1. The higher administration: The realm was divided into a number of counties. At their head was a royal count, who received three times the value of the money, was an administrative official, leader of the troops of his county and a judge. As there was no monetary economy, the count was granted land ownership and was soon taken from the large landowners. (This is how the hereditary nature of the office of count was prepared).

On the borders (MarcheJ, larger areas of land were placed under a marquis (marchio, of which marquis).

Herzbge were originally either royal officials who administered a duchy consisting of several counties, or the dukes of other tribes (dukes of Swabia, Bavaria, etc.) who were subordinate to the monarchs.

The duke was commander of the army, lord of the court and supreme administrative official; the legislature endeavoured to limit the ducal power; the deposition of Duke Tassilo of Bavaria by Emperor Charles temporarily ended the ducal office.

The emissaries dea K6nlgs were inspectors sent by the king to investigate the administration and rectify shortcomings; they also had their own jurisdiction and could intervene in cases of denial of justice and legal delays.

Under Emperor Charles, the emissaries (always one spiritual and one secular) became a permanent institution. The entire empire was divided into districts, which were travelled by these emissaries. The office disintegrated under the successors.

2. The lower administration: The smallest district under the Grnfschaft was the Hundertschaft. Its administrative officer was the Zentenar, next to him stood the Sakebaro as the enforcement officer.

The Immunity: Already under the Merovingians, large ecclesiastical and secular dominions were increasingly excluded from the ordinary administration of the state. Imperial authorities were not allowed to exercise them. Fiscal taxes were not allowed to be collected from the estates of the immune territory. Fiscal law was not allowed to be applied **against** the backers of this territory. The Immunity Herr was

Here he was a much more powerful judge, who first exercised lower jurisdiction and then also administered justice in more important cases. He paid a certain tax to the **king** and collected taxes from his heirs. He also went out into the field on the king's army; he no longer used to hire his serfs for this purpose, but kept professional warriors. With the decline of the free peasantry8 and the increase of the great Beaitz, the number and extent of thea immunity districts increased.

C. The wickerwork

1. Tribal law: The law of the Frankish period was tribal law. Everyone carried their own rights with them (personalisation principle). Frankish tribal law had a certain precedence, first the Ripuarian, then the Salian. With the jurisdiction of the Frankish royal courts and the spread of the Frankish civil service, ea attained a certain general validity. Nevertheless, it was not able to supplant the old tribal law.

Tribal law only applied to members of the same tribe. If the parties were of different tribes, they had to state in court or before legal transactions which law they lived by; from this then developed the power to choose a particular law for such legal transactions (the oldest root of international private law!). The Romans and the Roman Catholic Church lived according to Roman law. The Jews, as freemds, were under royal protection and a special right.

2. Originally, the **bearer of the law** was the king **as** in Germanic times. As the king developed from a king of the people to a successor of the Roman Caesars and a "king by the grace of God", he took the creation of law more and more into his own hands: First, he issued decrees within the existing laws by virtue of his power of banishment. He then had the current law recorded and amended with the consent of the people. He then replaced the consent of the people with the approval of his great ecclesiastical and secular rulers. Finally, he himself became master of legislation, which he changed at will.

3. The so-called "Volksrechte": A number of legal records from the Merovingian and Carolingian periods, which called themselves "Leges barba- rorum" (barbarian laws), are referred to as "Volksrechte". They cannot be referred to as "people's laws" in this sense, because in addition to recording traditional law, the most important parts of them appear as law imposed on the people (e.g. the compulsory donation on the deathbed).

a) The Vplkorecnte from **the tent of the** Merowlnger: The Lex Salica, daa right of the Salian Franks, from which the Käntgshaua of the

Merovingian, was already recorded at the beginning of the 6th century. Frankish words are inserted into the text, which is written in poor Latin, to explain how they were used on the Mal- statt {in mallobergo) (so-called Malberglsche Gloasel.

The Lex Ripuaria, the law of the Ripuarian Franks, originated in the time of the Merovingians, but gained importance in the time of the Carolingians, since theaes Hans belonged to the Ripuarian tribe.

The pactua Alamanorum, an early record of the Swabian tribal law, was then reworked under Charles Martel and expanded in favour of the church and the Frankish kingship to become the Lex Alamanorum.

The Lez Bajuvarorum lat around 728 or 729 after a ridge of the Frankish empire over the Bavarians arose from an extended legal record of Bavarian tribal law **in favour of the** church and kingship.

b) In the tent of the **Karollnger:** The Lex Prialonum in a manuscript from the time of Emperor Karla is very old and contains purely pagan provisions alongside the Christian ones. Penitential provisions for acts of violence predominate. Attached is a compilation of the whispers of two legal experts.

Lez Thuringorum is a Frankish law that was imposed under Emperor Charles of Thuringia.

The Lex Saxonum, a law of grauaamster rigour, was imposed on the Saxons by Emperor Charles. It was supplemented by the "capitulatio de partibua saxonicae" and the "capitulare sazonicuni". The capitulatio contains above all the cruel persecutions against the confessors of the old faith.

4. The capitularies: Capitularies are royal statutes and ordinances (so called after their division into capitals.

The capitularies are divided into

a) Capitula eccleaiastica for the regulation of ecclesiastical matters;

b) Capitula mandana for the regulation of worldly affairs. These are set out in

1. Capitula legibus addenda, supplementary ordinances to the people's law, originally only with the consent of the people, then enacted with the consent of the grandeesi

2. Capltula per se scribenda, decrees independent of the law of the people, issued for an entire tribe or for the entire realm;

3. Capltula mlasorum, instructions and ordinances for the royal emperors, according to which they had to act or proclaim--).

--Not all the capitularies we read are genuine. The collection of capitularies of Ansegisus of Pontanella, the collection of Benedlctua Levita of Mainz 1st, which was compiled by a clergyman in favour of the church, can be considered official.

At about the same time as Frankish law, a number of records of the law of the Germanic peoples who had migrated into the Roman Empire were created, namely

1. among the Burgundians, the Lex Burgundionum (like the Lez Romana BurgundionumJ aua of the time of King Gundobad: a collection of Burgundian royal lawsi

2. Among the Lombards, the Edictum Rothari, a systematic presentation of the criminal law and procedural law of the Lombards, compiled by King Rothar, is probably the best collection of Gomeran folk law.

This was later joined by the Edictum Langobardorum and the Capitulare Langobardorum.

3. The Visigoths had the Codex Euricianus of King Eurich {around **475),** the oldest Germanic code of law in the world, which in many cases also had an influence on Frankish law and, strangely enough, particularly strongly on Bavarian law.

The Lex Wisigotorum tum 650) already shows Visigothic law in a state of fusion with Roman provincial law.

D. Reporting

There were the following courts:

1. The royal court: In this court, the king exercised jurisdiction as the holder of the highest court of justice. The assessors were members of the court. The necessary assessor was the Count Palatine, who was the permanent representative under the Carolingians and deputy to the king.

The court of honour was the royal court, wherever the king was staying. Gerichstages were held by order of the king, regularly weekly under the Carolingians").

The country of the royal court was:

Necessary for all legal matters where eight was imposed for refusal of justice, for duels and for death sentences against free Franks. Later judgements were also passed here: Breach of the royal ban, military offences and serious misdemeanours.

The royal court was often called upon as a court of appeal. This led to the development of a series of instances. However, the royal court was also competent in all other legal matters. The king could bring any legal matter before his court.

In the royal court, it was not popular law that applied, but royal law and equity.

2. The Grailschaitsgerlcht: The county court represents the continuation of the Germanic court of justice in the transformation by the strengthened royal power.

--The courts held by the royal emissaries under royal ban were also regarded as royal courts.

a) In the early days of Mrowing, the ordinary judge was Thunginus, elected by the people of the county, who judged with seven judges and whose judgement had to be confirmed by the freemen present. All freemen had to attend the court (general obligation to attend). The count attended the court, but only had to execute the judgements.

A distinction was made **between** the echteDing, which was full moon and new moon on the Walberg,

and the governmentding, which was chaired not only by the count but also by the centenary. The aea was held as required.

bl In the course of the change in the currency, the thunginus disappeared and the real thing was restricted.

The count (or a vice-count or plenipotentiary) presided over real matters. In matters of duty, the centenar presided, limited to minor matters.

c) Emperor Charles abolished the universal rule, which was only to apply in the real thing. The revenge castles elected by the people were replaced by councillors appointed by the count. A college of aldermen was generally appointed in each hundred.

In the echt thing (in each hundred at most three times a year), the free men of age still remained a circumstance and had to form the judgement. With the decline of peasant freedom and the expansion of bondage, their **number** became **ever smaller.**

In the government (every 14 nights), the centenary or deputy of the count was the chairman; only the shoals were summoned for this purpose.

3. Ecclesiastical **jurisdiction** once applied to disputes between clergymen: however, the church soon established the principle that only the ecclesiastical court had jurisdiction in lawsuits against clergymen. At that time, it did not yet succeed in further extending its jurisdiction.

4. The lord of the manor had jurisdiction over his household members, the unfree and semi-free tenants, as far as it related to economic matters, and also over the preien. This form of jurisdiction was available to every lord of the manor.

Insofar as the lord of the manor possessed immunity, he exercised immunity jurisdiction; in this case, all actions against his estate were to be brought by third parties before the lord of immunity.

In order to exercise this judgement, the lords of immunity kept a special official with the title "advocatus" (from this the German word "Vogt" developedJ. The bailiff received one third of the court revenues*°}.

5. The emergency laws could be formed if a perpetrator was caught in the act. Everyone was obliged to
"However, the offender was not allowed to be killed, but had to be brought before the judge, who sentenced him if the plaintiff and the "Schreimannen" swore to the offence.

I. The civil process

1. The strengthening of royal power had a significant influence on the proceedings. Everywhere the state began to restrict the activities of the parties. The principle of negotiation and formal rigour were restricted. As before, proceedings were conducted orally, not in writing.

The judicial summons (bannitio) replaced the summons by the party (mannitio). The rich-terlical contribution to answer, to take the oath and to fulfil the judgement replaced the old litigation contract with its bet-like forms, took its place alongside the offered party oath and replaced the party contract to fulfil the judgement. The righterly contribution addition took its place alongside the party's offer of witnesses. The judge could now also hear fact witnesses on his own initiative and call witnesses that the party had not offered").

2. A legal enforcement procedure spread. The Germanic tent had left it up to the winner of the lawsuit to realise their rights. Now private seizure was only possible with judicial authorisation. Judicial enforcement by the messenger on the front line first developed in the area of movable property. The more the Germanic odal law dissolved, the seizure of land (fro- nungl) also appeared possible. A straw wipe was planted in front of the confiscated property.

3. The Etd with oath helper continues to appear as a means of payment. The oath was new.

--Initially the king appointed the bailiff, but later the landlords, especially the clergy and churches, acquired the right to **appoint their** own **bailiff.**

-5 Originally, thee only applied before the royal court, but was then also taken over by the count courts.

Königsurkunden provided full proof and could not be disputed (the significance of the notarial deed later developed from the validity of such deeds as evidence). The public notary's office was adopted from Italy, where it gradually developed after the 12th century, following the establishment of court clerks in the county courts.

Privaturecurrents did not provide any proof as such. They had to be sworn to. Whoever disputed them had to pierce the document, whereupon the person who claimed the authenticity of the document had to fight a duel for its authenticity.

The Gotteaurteil was brought into the country by the Christian church and was based on the idea that God would recognise the correctness of a trial claim or guilt through a miracle. The following judgements were made by God:

The condition: the prisoner had to swallow a piece of bread, and if it got stuck in his throat, he was deemed to have been transferred.
The fight: Both parties had to stand with outstretched arms in the position of a cross, the first to lower their arms lost.
The ceselfang: An object had to be taken out of a bowl of boiling water, and anyone who burnt themselves in the process was considered to have been transferred by God's judgement.
The schreltendbergIil hedpflugschar, mainly used as evidence of the chastity of wives; if a woman burnt herself, she had committed infidelity.

This kind of superstition was previously alien to Germanic law.

II. ThestrafproceB

Privat revenge is pushed back, atactive punishment prevails.

In the case of domestic violence, the public authorities intervene of their own accord. The punishments carried out by the injured party decrease. The feuds are pushed back.

The injured party was no longer allowed to refuse fines and penalties, but had to accept them. The laws contained very detailed catalogues of the fines to be paid for the various violations. The standard amount was the wergeld eiaee price; in addition to the praakaa, those in royal service received three times the wergeld, nobles twice the wergeld and those in bondage half the wergeld; one third of the wergeld was paid to the piscus -).

The feud was only permitted in the case of very serious misdemeanours, but was only directed against the perpetrator and no longer against his clan.

-Private agreements on the payment of the value money were forbidden so that the royal treasury did not lose its share.

The penalties were grausam.

Baptisms (by slaying, beheading, wheeling, destruction and burning in the case of heretics) became frequent. Emperor Charles threatened the death penalty for anyone who refused to be baptised.

Corperations increased. The corporal punishment was also used against free men from the time of Karl Kalser onwards; anyone who blasphemed Christian doctrine would have their tongue torn out.

Note: Germanic criminal law was based on the principle that every offence could be made amends for, provided it was not an evil act. In this case, the perpetrator of the offence was punished in order to remove his evil nature from the people. Since Christianisation, these ideas have been pushed back by the Mosaic principle of taleion
"An eye for an eye, a tooth for a tooth", which demanded that the perpetrator should at least be punished for what he had done to the injured party.

However, it was still possible to pay fines. The prosecution was new. Previously, a criminal offence could only be prosecuted if there was a plaintiff ("where there is no plaintiff, there is no judge"). It then developed that in cases of manslaughter, robbery and theft, the count could summon the suspect, who had to clear himself by oath or judgement of God. During the reign of Charles the Great, the institution of the "revenuers" developed, who were officially appointed and had to report offences known to them and testify as witnesses. Only God's judgementwas possibleagainst their oath. (Aconvenient means of destroying wrongdoers 1)

E". The ctrcb1lcbe I4errscbaftBaosprucb 1za fräzddscben Belcb

When Chlodwig converted to the Roman Church, he was nevertheless largely remained master of the church organisation in his kingdom.

When in 754 Pipin had the pope authorise him to remove the rightful king, this gave the Church a certain justification for describing the bestowal of the crown as a papal gift.

The plaintiffs **asserted** their **claim**:

a) Ecclesiastical law. Even in the opinion of the early church in the empire, the church's authority to legislate was not based on state delegation, but on divine mandate. The church recognised the sources of its law:

1. The Bibel, Old and New Testament, a collection of 8 late writings, which was completed in the 4th century AD. Ztr. was completed. As early as the Merovingian period, the Catholic Church regarded the provisions of the New Testament as direct divine law (the authoritative text was not the original Greek, but the Latin version).

nical translation of the church father Hieronymua, the so-called "Vulgate"}.

2. Tradltion, i.e. the oral transmission of the sayings of Christ, the apostles and their successors.

3. The concernations of concils: These were referred to as Decreta insofar as they related to doctrines of faith, and as Canonei insofar as they related to the external life of the Church.

4. The papestlces**).

5. Receives quents are for more than the learns of the Chirchenvaters: among them stands out the teaching of the Chirchenvater Auguetin (d. 430 al8 Bishop in Hippo), set down in his book "De ctviate Dei" (From Godtesetat).

According to Augustine, the Church as the kingdom of God is above the state. When the bishops have spoken, the authorities must carry it out. In the world there is a battle between the kingdom of God and the kingdom of the devil. At the end of time, the devil will try to lay the world at his feet through the Antichrist, but then Christ will come down at the Last Judgement. The subordination of the state to the Church is strongly advocated by Augustine").

bl The collections of clerical law. These follow each other in chronological order as follows:

1. Constitutiones apostolicae. This is a collection of moral, cultic and legal norms allegedly issued by the apostles, which originated in Syria around 250 AD. C.E. in Syria and the

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°-) Among the papal decrees one distinguished:

1. Conßtitutions, i.e. orders that were generally binding for the whole church.

2. Rescripta, i.e. decisions in individual cases. Copies of these papal decrees were taken into the archives very early on and "Regesten", i.e. lists of documents,8 were recorded.

A long distinction was made in terms of shape:

3. Bullae, i.e. open letters with a hanging seal showing the images of the apostles Paul and Peter on the front and the name, image and coat of arms of the Pope on the back (bulla means seal). They were always written in Latin on the rough side of the parchment in Gothic letters.

4. Breve: sealed letters on parchment or paper, in the Middle Ages in Latin, today often in Italian, sealed with the papal secret seal, the "Plscherring".

5. Simple handwritten letters from the Pope to individual persons: Chirographa, to all bishops: Encyclica.

-It was also pronounced early on by the popes. In 493, Pope Gelasiue I wrote to the Eastern Roman Emperor Anastasiuss:
"There are two powers, illustrious emperor, by which the world is governed, the sacred authority of the priests and the kingship. Of these, however, the first is all the more important because the priests must also give an account of the kings before the judgement seat of God."

then two more books were added. It did not catch on in the Roman Church and was rejected early on in the Oriental Church.

2. Canonesapostolorum, a collection of 50 and later 85 canons based on council resolutions and the Constitutionea apostolieae, were created in the 4th century. The first 50 canons became valid in the Roman Church.

3. Thesamemberofthedionysios. Towards the end of the In the 5th century, the monk Dionysius Exiguus compiled a collection of papal decrees including the 50 canonaes apostolorum. His collection dates back to 498.

4. The popes added to this collection and in 774 Pope Hadrian I gave a law book (CollectioDionysio-Hadriana) to Emperor Charles I, which was supplemented by such later additions. At the Imperial Diet of Aachen in 802, this book was adopted by the Frankish imperial church as the Codexcanonum.

cJ The great forgeries: 1. the ConstautinischeSchenkuug: When Pope Stephen II travelled to France in 753 to crown the emperor Pipin as king, he brought the document of the "Gonstanflnl Donation" with him. This was an ingenious forgery intended to prove that the Pope had already been given the city of Rome as his seat by Emperor Constantine and that he had been given sovereignty over the entire Western Roman Empire.

2. Even more significant was the second forgery, the .,Pseudo1sodort's Decretauen".

A rather poor collection of resolutions of Spanish provincial synods and individual papal decrees, which ran under the name of Bishop Isidore of Seville, was forged between 847 and 853 in the Frankish Empire in the area of the archbishopric of Reime by a number of forged council resolutions and papal documents. The intention of the forgery was to prove the superiority of the clergy over the laity as an ancient right; above all to prove that since time immemorial no secular court could judge a clergyman, no secular person could accuse a clergyman; that the bishops were not subject to the archbishops but directly to the pope. This falsification prevailed in the Church").

-'} It was not until the 16th century that it was debunked by the Magdeburg Cen- turiatoren {author of a church history).

5. Tell

The law of the Middle Ages

1. Abachnity

The constitutional law of the late Middle Ages

A. Geachlchtllche Entwicklung bls zum Rnde der ka Hunger

1. The last carnival of the Elnheltsstaatea: The empire of Emperor Charles dissolved and disintegrated into several parts, as his successors proved incapable of holding this vast, overpopulated empire together.

Ludwig der Promme {81 40) came into conflict with his sons, and after his death in 843 in the Treaty of Verdun, the Rhine was divided into three parts: the oldest son Lothar bekam ltalien and "Mittelfranken", bounded east by the Rhine {with the exception of the Palatinate), west by the Rhöne, Saöne, Maas and Schelle (capitals Rome and Aachen). This part encompassed populations of very different origins, but the core landscapes of the Carolingian monarchy. It was thought to be the strongest landscape of the three kingdoms, but in reality remained the weakest because it was nationally very disunited. Ludwig II received Oatfranken,
i.e. all lands on the right bank of the Rhine, plus the districts of Mainz, Speyer and Worms. Karl der Kahle got Weatfranken. The division was not based on national borders, but on the boundaries of the bishoprics: however, the western part (West Franconia) was almost purely Romanic, East Franconia purely Germanic.

2. The second partition at Meraen in 870: After the death of Lothair, Louis the East Frank and Charles the West Frank divided his land: the Germanic part (Friesland, Lorraine and Elaass) together with some Romanic regions came to the East Franks, the Romanic part to the West Franks.

3. The 2tarollnger In Germany: Ludwig der Deutache (84 76) smothered a last Saxon uprising (Stel- linga Uprising) in blood, fought with the Moravians, Hamburg was destroyed by the Normans. In 884, Karl der Dicke once again became lord of the entire Carolingian Empire, as the West Franks also elected him king. Suffering from hereditary disease, he was deposed. Arnulf of Kärnten (887-898) defeated the Normans at Leuven and fought against the Moravians. Ludwig das Kind (89M91 1), his six-year-old son, was no longer able to prevail against external attacks and internal turmoil. The Magyars devastated large parts of Germany, the tribal duchies formed anew (Saxony, Swabia, Franconia, Lorraine), the Thuringians and Frisians no longer had tribal duchies.

Conrad I (911-918J fought in vain for the recognition of royal power, Lorraine slipped away into the West Frankish Empire, the devastation caused by the Magyars became rampant.

4. The empire of the East Frankish Carolingians fought in the north against the warlike Vikings, on the northern and middle Elbe against the Northwends, on the Saale against the Sorbs, in **Bohemia against** the then powerful Great Moravian Empire; the attack of the Magyars was fatal. It did not have a single truly secure and peaceful border apart from the Alps in the south.

b) Intere: The state conatruction of Emperor Karle failed. The empire was overpopulated, it had not been able to win the hearts of the people (not least because of the forced conversions). The county organisation and centralisation did not take root - the old tribal duchy could rise again. A serious illness (probably epilepsy, which successively affected Charles the Fat and his (more capable) brothers before made them unfit to govern.

c) The Hearesorganisation with a few professional warriors over an oppressed and enslaved peasantry failed against large and freedom-loving peoples.

d) Although the church amassed immense wealth, its selfishness meant that it was incapable of acting as an umbrella for the imperial idea. When it attempted to do so (under Louis the Fromman, and most recently under Conrad I at the Synod of Hohen-Altheim), it antagonised all secular forces within the empire.

The Carolingian state building had collapsed politically, organisationally and militarily due to its own ethnic alienation. There was a danger that the German people would be buried under these ruins, that the Bavarian lands would fall into the hands of the Magyars, that the Wendish peoples would continue their westward advance at will, that the sea coasts would pass into Scandinavian hands.

B. The foundation of the German Reich

1. The Saxon kings: **Heinrlch I** (91M936l, Duke of Saxony, defeated the Wends (conquest of Brennabor in 9281, the Czechs (929), the Magyars (victory at Riade in 933) and the Danes (934) in the course of his reign. He renounced ecclesiastical anointment and the imperial crown, brought Lorraine home to the empire and laid the foundations of a German power. Domestically, he favoured militancy by founding castles and creating a German equestrian army (the root of later chivalry He allowed the duchies to exist and was "first among equals" among the dukes. Otto I (93M973) fought against the ducal power without being able to eliminate it. In addition to the dukes, he strengthened two other powers:

a) the Pfalzgraf as administrator of the royal estates in the duchy,

b) the Blschöfe and Erzbißchöfe, to whom he transferred the county8 rights in the cities almost everywhere.

In terms of foreign policy, he was victorious over the Magyars on the Lechfeld in 955 (and over the Wends on the Recknitz); in 962 he was crowned emperor in Rome.

His successors Otto II {973-9831 and Otto III {98Ml002) were already more distanced from their native German duties by Italian politics. Otto III felt himself to be a world ruler. Heinrich II (the HolyJ subjugated Upper Italy, led
{the only) war of the empire against Poland; his name of the
"Saints", he owed huge donations of imperial property to the Geiatlichkeit.

The development of constitutional law: the consolidation of the empire until the end of the Saxon emperors:

A strong influence of the Catholic power over the tribal dukedoms, which nevertheless did not disappear but enforced heredity. The tribal duchies themselves, however, were already beginning to divide"). However, the dukes were still imperial officials, albeit hereditary.

State and Church: The kingship was strong, the papacy weak. The church was under the king, who used its power for state purposes:

1. The king appointed the archbishops, bishops and imperial abbots. All ecclesiastical princes were imperial officials and could be deposed by the king-°).

2. The Königgrif largely internationalchiclection.

3. The church property consisted mainly of land that the empire had granted to the church, and only to a lesser extent of the church's own property.

The development of the Bauemtumi: a) The Carolingian spring of the 1st century.

During the decline of the Carolingian Empire, the peasantry in many areas had regained their independence from the Pronhöfe.

Where the monasteries had been destroyed by the Magyars, far-sighted princes (in Bavaria Duke Arnulf, hence the name "Evil" in the monastery chronicles) had the monasteries destroyed and the land given to defenceless Preibauem.

With the advent of the monetary economy, it often proved more practical for the landlords to convert the farmers' previous labour into monetary payments, and finally to lease out the land they had farmed themselves.

--The Duchy of Franconia was abolished in **939**, Lorraine by Otto I. divided into Upper Lorraine (Nancy) and Lower Lorraine (Brabant). Kfimten separated from Bavaria around 1000.

--The investiture was performed by handing over the dea Stabe8 shepherd's atab and the ring. No distinction was made between secular rights and spiritual rights.

b) Where landed estates were located far apart, they often handed them over to the previous stewards ("Meier" from the Latin major der Größere) in return for fixed deliveries and payments. These Meier sought to acquire their own rights to the land at an early stage.

The research: Previous manorial services were transformed into fixed levies, and even landless serfs were often able to lease land. Developments pushed for the dissolution of the large estates and the emergence of new farming communities. (Economically, we find certain improvements among the farmers, even the beginnings of the crop rotation economy along the Rhine.

The towns: Under the Saxon emperors, the oldest Roman towns were episcopal towns, the beginnings of a town council were to be found everywhere, and communical budgers (guilds) began to fight for co-determination in the town. The guilds of craftsmen emerged either from early unions of craftsmen employed (or once enslaved) on the old court of the town lord, or from free brotherhoods of craftsmen who had migrated to the town. As Henry I's castles (as roadblocks against the Magyar cavalry) were built on important roads, they often developed into urban settlements; the granting of the power of the manor gave rise to towns from established markets.

2. The Kalser from the House of Hall: Konrad II (1024 to 1039), one of the most successful German rulers, consolidates imperial power in Italy and wins Burgundy (1033).

Heinrich III, his son (1039-1056), subjugates Bohemia again and conquers Hungary.

The Cluniac movement: As early as the reign of Conrad II, a monastic movement began to emerge from the Burgundian monastery of Cluny, which attacked the foundations of the empire.

Their aim was: the communication of the world through the Kirche").

Going directly back to the Kirehen father Augustin, the Cluniac movement demanded the subjugation of the state. In particular, it demanded: No temporal prince should appoint a clergyman to his office: 1. Verbot the laien-

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--As high as God is above the world, the church would be above kings; a priest could forgive the king his sins, but not the king the priest.

investiture"). They demanded that no secular prince was allowed to take money for a clerical office: "2nd VerbotdeSimo-nie"). If implemented, this principle would have meant the loss of all income from the large imperial fiefdoms in ecclesiastical possession for the imperial treasury. It demanded: 3. thecommission of the priests, the commandment of celibacy of the secular priests (not their chastity - only the monks were obliged to chastity): zousat.

Grounds: On the one hand, the Church wanted to have the priests at its sole disposal, unencumbered by family ties. Above all, however, it wanted to prevent the hereditary nature of priesthoods from becoming established.

The hereditary nature of the fiefs and their consequences: Conrad II decreed the hereditary nature of knightly fiefs in 1037. (Reason: to make it impossible for the dukes to deprive the knights of their fiefs by threatening to deprive them of them or to give them to their children.

to refuse to be deployed against the king as well).

The feudal fief could only be revoked by a feudal court of other feudatories; the decision of the feudal courta could be appealed to the German king.

The hereditary nature of knightly fiefdoms had an early effect on the burghers, and even the fiefdoms of the towns became hereditary, and the monastery builders, if necessary with the help of the royal bailiffs, finally enforced the hereditary nature of their land almost everywhere.

Note: Conrad II's law thus led to the creation of the German

The dissolution of the Fronhof **system** meant that the peasant was freed **from** encumbrances and Scharwerken (which were replaced by fixed levies attached to the land) and now also gained hereditary rights. This in itself meant a reversal of the destruction of peasant rights that had occurred in the Merovingian-Carolingian period.

Bishops and village priests were all married at that time. There was a possibility that they too tried to inherit their ecclesiastical positions (in this way the land of the "dead hand" acquired by the church would have been drawn back into the living cycle of inheritance).

However, the church wanted to prevent this development at all costs. This could only be achieved by making it impossible for legitimate heirs to arise.

The investment dispute and its consequences for the constitutional law of the empire: Heinrich IV. (105 1106), with six years on the

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--] The implementation of this principle meant for the German king the loss of all control over the huge ecclesiastical sessions, hence the end of the Ottonian imperial8 church constitution.

--So called after the sorcerer Simon Magus, who was named by Paul wanted to buy **spiritual** gifts **for** money.

He came to the throne early on and became involved in this conflict with the Church. Even during his mother's reign, bishops and archbishops had enormous imperial fiefdoms bestowed upon them (Anno of Cologne, Adalbert of Bremen).

Papst Gregor VII. (Monk Hildebrandl interfered in the young king's battles with the Saxons, invited German bishops to Rome to answer for their actions, and set himself up as judge over the young king. Henry had him deposed (as his father Henry III had successively deposed three unsuitable popes). Greegor VII then took over from the king.

The Pope and the Principality in alliance against the **Relch:** A faction of rebellious German princes declared that they would no longer submit to the king as long as he was under ban, gathered at Tribur and called on the Pope to appear as arbitrator in Germany and give the German crown to the most worthy"). Henry IV prevented this development by going to Canossa and, as a repentant penitent, forcing the Pope to release him from the ban. As the rightful king, he was thus able to put down the rebels in the kingdom; however, the civil war, unleashed by the pope, broke out again.

The Pope used as weapons:

1. the Bann, i.e. the exclusion of the banished king from the church community: no Christian was allowed to have any more contact with him.

2. the interdict: every service and]every act of worship, burial, baptism etc. was stopped where the banned person was or where the people stood by his cause.

3. the cancellation of the oath of allegiance of the vassals the Eld den- **to** the king. Those who still adhered were thus regarded by the against God" church as "oath-breakers".

The Concordat of Worms: Heinrich V (110M1125} captured Pope Paschal II in 1111 and forced him to renounce the right of investiture in favour of the emperor. When the pope was free, he broke this treaty. In 1122, the Vormser Konkordat: In Deutschland, the ecclesiastical election of bishops was to take place in the presence of the emperor or his envoys. The imperial investiture was to take place before the consecration (but not with ring and staff, but with the sceptre).

For Italien and Burgund, the enfeoffment was not to take place until after the consecration.

-This meant recognising the pope's right to confer the German crown, as claimed by the papacy.

Assessment: In Italy and Burgundy, the influence of the emperor had thus become minimal, as the refusal of consecration after consecration always meant a case of conflict; in Germany, the foundation of the Ottonian imperial church had fallen away.

C. The decline of the Welches

The Hohenstaufen's struggle against the papacy: a) Lothar von Sachsen (112M1137) was successful in the east of the empire, but in 1133 he took the estates of the Margravine of Tuscia in fief from the pope. From this, the papal diplo- macy immediately construed that the emperor was generally a feudal lord of the pope.

b) Conrad II (113M1152), Hohenstaufe, brought to the throne by the papal party (so that Lothar's powerful son Henry the Proud would not take the throne), was strongly under ecclesiastical influence, lost a large imperial army on the second crusade (1147).

c) Friedrich Barbarossa (nephew of Conrad II, 1152 to 1190) acquired Silesia, made Austria an independent duchy and made Denmark subject to feudal obligations.

He fought unsuccessfully against the northern Italian cities and against Pope Alexander III (previously Cardinal Roland of Sienna, who had once again demanded: "From whom does the emperor have the empire, if not from the Pope? "J.

In 1180, Frederick Barbarossa deposed the Saxon Duke Henry the Lion, divided the Duchy of Saxony and had to cede great rights to the German princes in order to gain their support.

d) Heinrich VI (1190-1197J tried in vain to turn Germany into a hereditary kingdom. After his death, a double election took place in Germany; Philip of Swabia (1198-1208) fought against Otto IV of Brunswick (119 1215) i further imperial property and imperial rights were lost to the individual princes.

e) Friedrich II (121 1250) ruled predominantly in Italy, and his influence on Germany became less and less.

He had to concede to the German F-ür8ten:

t. To the ecclesiastical princes: the confoederatiu cum principibus ecclesiasticis: The emperor renounced the king's previous right to the income from the ecclesiastical principalities during the abdication of a chair, to the estates of deceased ecclesiastical princes, to the establishment of new mints and customs houses and, above all, undertook to reissue imperial church fiefs that had fallen to ecclesiastical dignitaries - this meant that the redemption of imperial church property was finally lost.

2. to the worldings tatutuminfavorenrprincipum: The emperor renounced the building of castles in the territory of the "sovereigns", gave them the right to establish markets, mints and customs houses, recognised the sovereign courts as courts of sovereign law and, at the request of the sovereigns, forbade the cities to accept pale-citizens. With the death of Frederick II, the empire collapsed.

f) Conrad IV (125s12541 died early in Italy. In 1256, the papal counter-king William of Holland, who had been set up against him, fell to the West Frisians. From 125 1273 there was no empire.

D. The development of constitutional law in detail.

The German constitution

1. The succession to the throne: From Henry I onwards, the German Empire was a united kingdom.

al passive ware received: Any person who had been born could be elected king (according to the Saxon Mirror, he could not be lame, a leper or banned by the Pope; princely descent was not required).

bl Wahl: The election first took place in such a way that the king was taken as far as possible from the ruling dynasty. The attempts to make the German crown hereditary did not succeed, to the serious detriment of the empire, as all German ruling houses died out in the fourth to fifth generation (in contrast to France, where after the extinction of the Carolingians first the Capetians [987 to 1328], then the Valois [132 to 1498], then the Orleans [149 to 1589], who were also related to them, and the Bourbons [1589 to 1792], also descended from the Capetians, ruled. In France, therefore, there had been no real royal election since 987, but the same tribe, albeit in different lines and represented by very long-lived kings, remained in power).

cJ In Germany, the fourfold change of sovereignty (**as** in Poland, where the elective kingship remained) meant that concessions had to be made to the royal electors at the expense of the crown.

d) The change of ruling dynasties (Habsburgs, Luxembourgers, Wittelsbachs) that emerged after the interregnum forced the aspiring kings to make ever new concessions to the princes.

e) Wahl was recommended:

1. There was the sevolution of the community. There was probably always a prerogative of the secular and ecclesiastical greats, on whom it essentially depended. The people merely gave their consent to the election. The Archbishop of Mainz was in charge of the election.

2. The knights not only ruled the people, but also the knighthood in the royal election (in contrast: in Poland, the knighthood kept the royal election in their hands, did not allow any sovereign princes to arise, but instead clothed themselves with all civic privileges). The elimination of the people and the knighthood by the princes in Germany made Germany an early "Für8tenrepublik" with a monarchical top.

3. The 'first in command' (the archbishops of Mainz, Trier and Cologne, the Duke of Saxony, the Margrave of Brandenburg and the Count Palatine of the Rhine, who were later joined by the King of Bohemia) had already seized the prerogative of electing the king at the double election of Philip of Swabia and Otto IV.

4. During the interregnum, they ensured that they were exclusively authorised to elect the king. The other princes only had the right of consent.

2. The royal power: Until the end of the Hohenstaufen dynasty, the king was theoretically regarded as the absolute holder of supreme power. In reality, the concessions that the princes forced the emperor to make in the emperor's struggle against the pope meant that imperial power diminished more and more.

al Deutsches Königtum and Romisches Kaisertum : As ruler over Germany, the legally elected "king" was the ruler. The empire was regarded as a continuation of the Frankish empire. The king therefore lived - even if he was of a different tribe - according to Frankish law.

1. The person chosen as king had a claim to the Kai8er coronation.

2. Until around the time of the interregnum, the principle applied that the imperial title was acquired through the papal coronation, but that the pope had to carry it out.

3. Later, the view that the imperial dignity was already acquired with the election of the king came to the fore8).

There was only one kai8er in Europe: the German king and Roman kai8er.

bJ After the Caiser were leaded:

1. Precedence over all the princes of Europe.
2. Position as head of Christianity in worldly matters.
3. First protector of the church.
4. Born arbiter of all the other prin--).

--l The royal and imperial powers were by their **very nature** not differentiated by power, but only by rank.

--Frederick Barbarosea and Frederick II tried to build a world monarchy under German leadership on the idea of the emperor. They failed due to the resistance of the Pope, the other European princes, who only wanted to recognise a theoretical primacy but no real leadership of the emperor, and not least the German people themselves, who were attached to their native kingship and found the idea of a supranational imperial world monarchy alien.

3. The powers of the king: a) The German king (whether crowned emperor or not) was entitled to rule, i.e. he was bound by the applicable law and could only give orders that were permitted by law and custom (i.e. he was not an "absolute" ruler). Arbitrariness on the part of the king was regarded as a breach of the vow made at the coronation to "practise justice" and "always be the ruler of the realm". This gave rise to the view that such offences against the coronation vow released the subjects from the oath of allegiance. (In Germany, only the princes then claimed the right to depose such a king; where the choice of king had not passed to the princes but remained with the knighthood, the latter derived from this the right to rebellion [jus rebellionis], the right to a revolutionary alliance [right of confederation], as in Hungary and Poland, but also soon in the individual German sovereign territories).

4. The **Diet:** As royal power declined, the power of the Diet increased.

In the Carolingarea, it only served as a meeting place for the great men of the court and the administration.

Amongst the last few states, his consent had already become a factual (if not legal) necessity for the king.

Under the Supreme Diet, the king was already bound to the approval of the Diet in all important imperial matters (imperial laws, imperial military campaigns, Italian campaigns, creation of new principalities).

5. The restriction of royal powers: The king still had the following powers at the time of the rulers from the Saxon dynasty:

1. The Imperial Diet was already required to approve important constitutional treaties under the Hohenstaufen dynasty.

2. But even under the last Salians the princes interfered here, under the Hohenstaufen their consent was required for Roman campaigns, Frederick II gave the princes the right to build castles.

3. OberateGerichtsherrschaft; - Frederick II, however, had to recognise the territorial courts, the kaise•! iche Rechts- pflege remained limited to the court of the emperor {und auf ein- zelne landachaftlich erhaltene Gerichte aus kaiserlichem Gerichtabannl.

4. The rights of the ruler and the regalia (right of passage, minting rights, mining rights, Jewish money). These rights were largely transferred to the princes.

5. OberateLehnsherrschaft: The emperor was the supreme feudal lord of all princes, 5tadtherr of the imperial cities, 5patron of the imperial churches, employer of the imperial ministers.

However, this position as supreme feudal lord was broken by the fact that the princes enforced the principle that a feud that had fallen to the king had to be returned by the king within a year and a day. (Contrast: France, where the king was able to keep fiefs that had fallen into his own hands, i.e. standardisation progressed steadily).

fi. The Belch administration: There was no fixed residence for the king; the court was itinerant, as it had to be maintained by the individual imperial estates.

a) The old offices of the Carolingian period were also transferred to sovereigns and were reduced to mere offices of honour without political significance and were only **exercised** on ceremonial occasions {coronation}. (The Duke of Saxony was Imperial Marshal, the Count Palatine of the Rhine was Imperial Councillor, the King of Bohemia was Imperial Chamberlain and the Margrave of Brandenburg was Imperial Treasurer). Otherwise, the corresponding offices were held by imperial ministerial knights (hereditary duchesses, hereditary princes, hereditary chamberlains and hereditary marshals). The court palatine of the Carolingian period disappeared. The king himself held court. If the king was sued, his place of jurisdiction in secular matters was before the Count Palatine of the Rhine and in spiritual matters before the Pope.

b} Erzkanzler was:

1. for Germany: the Archbishop of Mainz,
2. for Italy: the Archbishop of Cologne,
3. for Burgundy: the Archbishop of Trier.

The royal court was headed by a court chancellor (senior clergyman) who followed the court. It also included a protonotarius and several councillors. Together they formed the court council, from which the imperial court council developed. The protonotarius was the court clerk. We encounter the protonotarius again in the 17th to 19th centuries, where he acted as the "first court clerk" - particularly in the higher courts - and supervised several court clerks.

7. The position of the Which: Henry I already found the Carolingian county constitution in ruins. The office of the count had disappeared, but the tribal duchy of the five duchies of Saxony, Franconia, Swabia, Lorraine and Bavaria was powerful.

a) The Stamesherzogtümer1 opened up. With the deposition of Henry the Lion **(1080), the** last tribal duchy disappeared.

bl The environment of the country. With the dissolution of the county constitution, heredity had also taken hold of the office of count"}.

1. The Grafes were committeed from Königsbeamts to the king's responsibility, the amt to the king's responsibility.

The old county boundaries were changed by division, inheritance and conquest; larger towns, monasteries and imperial knights who remained directly under the Empire were removed from the county.

2. New types of counts emerged: the markgrafes on the borders retained a very independent position, exercised power, had a fairly large territory and exercised superior jurisdiction.

The Stamespfalcgrafes, created by Otto I as a counterweight to the tribal dukes, were originally the representatives of the king in the duchy and had oversight of the royal estates. They all disappeared apart from the Count Palatine of the Rhine, who even rose to the rank of elector.

Endowed with certain rights of the eminence counts, the Landgrafv of Thuringen its power over most of the Thuringian region-').

3. The sub-offices (Hundertschaften, **Zehnt,** Go in Saxony) were retained. At their head was the Zentenarius, a lower civil servant. The sovereigns made these lower officials more **and more** dependent on themselves and subordinated them entirely to themselves.

4. The sovereignty of the princes developed as a result of the dissolution of the Gau, the fragmentation and reconnection of the former imperial counties, which became hereditary fiefdoms. In particular, the development of the sovereignty of the lands8 strengthened the status of the fiefdom, and the offices became hereditary fiefs, the exercise of which became usable rights that the fief holder used to his own advantage. Above all, the power of the land became a fief i the king increased his influence.

The king lost influence over the courts because their owners were no longer directly fiefdoms of him, but of a count. The Lehnazwang (see above) prevented fiefs that had fallen to the king from remaining in his hands. Above all, however, the great and small Pürßtentum forced the kings to hand over one imperial right after another, namely:

at the Königswahl,

in the case of the purchase of shares for the Italiences, in the case of the purchase of shares for the Italiences

the empire.

-°) In fact, the earldoms had already early on only been given to respected men with large estates and, unless there were very special reasons, were left in the family.

•¹) Burggrafen had only the title of count, but originally They were not counts, but rather commanders of the imperial castles in imperial cities. The burgraves of Nuremberg rose from their ranks to rulers in their 1st margraviate, later becoming margraves of Brandenburg.

Sovereignty began with the **acquisition of the** Hochgerlchtsbarkelt by the TerrltorlaIHtraten.

High jurisdiction encompassed all criminal cases concerning life and limb, all civil and criminal cases concerning honour and price, inheritance and property. Its scope varied. In any case, it included blood jurisdiction together with the power of execution. Originally, high jurisdiction could only be exercised by those to whom it had been granted by the king (royal banns). Towards the end of the Hohenstaufen dynasty and during the interregnum, the sovereigns everywhere usurped this bann loan. Only where the princes gained their own high jurisdiction did they develop their own sovereignty-°). In the statutum in favourem principum, Frederick II refers to the princes as "sovereigns" (domini terrae) for the first time.

8. The administration of the Terrltorlen: The sovereign stood in the territory, as the king in the empire stood opposite the princes, in turn opposite the estates.

A distinction was usually made between three classes:

1. Status: Clergy,
2. Status: Knighthood {**Land-based** knighthood),
3. Stand: "Landscape", the representatives of the cities.
   In some areas (e.g. Tyrol) farmers were also represented.

Programment of the land stated statement:

1. The rights of the sovereigns were not limited, but rather consisted of a whole bundle of the most diverse rights, jurisdiction, customs rights, ban rights, and could not be extended without the consent of those affected.

2. The princes gathered the great men of the land at early meetings to discuss state affairs (peace, contributions to the state administration).

3. The power of the estates was enhanced by the fact that, in order to protect their rights, they joined together to form "unions" ("Verbrüderungen") in order to be able to present a united front to the sovereign in all matters concerning the estates.

4. The Landtag was the most important organ of the estates, a regular meeting for participation in state affairs. The "Landkasten", a common treasury of the estates, was also kept there.

The business of the land states:

The prince only exercised direct administration on **his** own landed property (later: Domanium). Otherwise, the estates were subject to self-government (municipal, ecclesiastical [in the spiritual areas], knighthood). Only in the Domanium did the sovereign have the right of direct taxation. For the general administration of the land, he required a subsidy from the estates ("Bede"), which was paid in money and had to be authorised each time. The estates did not pay without corresponding concessions. The

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--Smaller areas, where the lord {knight of the realm, dynast} did not acquire high jurisdiction, but only had lower jurisdiction, but was personally subject to the court of a territorial lord, remained insignificant for the development of a sovereignty.

Estates made use of the right of resistance (jus confoederationis and jus rebellioniß) against arbitrary acts by the prince, but only realised it in some territories.

The princely administration

The princely court consisted of salaried officials. The principality then developed its own official body, firstly a chancellor and protonotary, then an advisory council of permanently employed court officials ("Privy Councillor "J.

Princely officials (judges, bailiffs, bailiffs and stewards) were appointed to administer the princely estates and generally to exercise princely rights. The princely domains were generally still administered directly; they were not leased out. Justice and administration were not separated.

B. D1e Stttnde of the Mtttela1ter8

The old social order of the Germanic period with its distinction between "free" and "unfree" was broken by the new formations of the feudal state. Although a distinction was still made between free and unfree birth for a long time, new occupational strata were formed, acquired the hereditary nature of the profession and finally became birthrates again. This is how the birthrates came into being: Lords, knights, burghers and farmers.

1. The Herrenstand: The Herrenstand included the emperor and the princes.

1. Up to the end of the Salian emperors, for example, the princes were the representatives of the high rulers (the three chancellors for Germany, Italy and Burgundy, the dukes, the counts directly under the emperor, archbishops, bishops and imperial abbots).

Their rank therefore derived from their official position. {Amtsadel, older imperial nobility.)

2. This concept became blurred. It was no longer the office that was decisive, but the sovereign's relationship to the realm. Only those who had received a flag or sceptre fief directly from the king and were duke, count palatine, margrave and landgrave were considered princes.

2. In many cases, the earldoms and stepping lords still counted themselves as princes. They included anyone who owned an allodial (not feudal) manor with jurisdiction.

3. The knighthood: The knighthood stands between the princes, free lords and imperial counts on the one hand and the non-knightly commoners on the other.

a) Origin of the knighthood: The knighthood developed from

1. Rests of the germanialelings;

2. altfreienbauerns who had either risen to leadership within their community or (often as Meier) had acquired manorial rights;

3. or the sons of the founders, who had risen as men of war and were enfeoffed with landed property (this can in part be

still easy to trace: in Holstein, for example, the old Adele coats of family names and arms of [DutchJ yeoman families the Kremper, Wilster and Haseldorfer Marsch) ;

4. andministerials : These were either people who had received a service fief, but had gone into the personal bondage of a prince in order to achieve economic independence, or people who had received a service fief, but had not gone into personal bondage.

These were also fiefs who had received a service fief and served a prince as unfree men of war. For quite a long time, a distinction was made in knightly families as to which family was of free and which of unfree origin. The families of free origin predominated by far. With the incorporation of the regions east of the Elbe (Mecklenburg, Brandenburg, Pomerania, Silesia), the Wendish warrior nobility there was incorporated into the German knighthood; in East Prussia only a few Prussian families were incorporated into the knighthood.

The knights were close to the "knightly people", above all the "Schöffenbarfreien", i.e . the members of the families appointed to the office of alderman, especially in Lower Saxony and Westphalia. The majority of those freed from the aldermen's bar were freed from old age (in addition, imperial ministers who had been freed and had acquired landed property were also included in the group of those freed from the aldermen's bar). Not all aldermen were knights. In many areas, the number of free peasants predominated among the Schöfenbarfrei.

In some areas of Germany, knighthood did not develop because the feudal system did not prevail there (for example in Friesland: there were only free peasants and a few unfree peasants, the Frisian peasant families bore arms and coats of arms).

b} The essence of the council estate: The knightly rank was initially a beruta rank. It comprised every man of war who went into the field on horseback with helmet and shield and was able to fight.

It developed into a birthright. Soon only those who were the son and grandson of a knight could be knights. Originally, only free descent was required in the case of the mother's birth; later, the conditions of affiliation were increasingly tightened. The knight could not change his rank. The knighthood developed a special status. The boy knight was usually first brought up by another knight or prince, then followed him as a squire and was recognised as a knight by knighthood.

Early on, knighthood developed a special status, the loss of which, due to unworthy behaviour, resulted in the loss of membership of the knighthood. It developed special professional duties (loyalty, personal bravery, standing up for the defenceless, bearing arms, knowledge of the law); at the height of its heyday, knighthood was a genuine cultural institution (Walther von der Vogelweide, Wolfram von Eschenbach and others), and even in its later decline, the concept of chivalry outlived the rank.

4. the bourgeoisie: aJ ntroduction of the bourgeoisie: In the cities that had come over from the Carolingian Empire (Roman cities and episcopal seats), the old free

The bourgeoisie developed alongside the serfs of the bishop's {or city lord's) court, free and unfree servants of the city lord. As part of the dissolution of the Fronhof economy, the serfs of the Fronhof achieved first economic and then personal freedom¡ the awareness of a unified free bourgeoisie developed in the city, which also protected peasants moving into the city (insofar as they were unfree) from persecution by their landlords ("city air makes you free").

The expansion of the town was limited by its walls, the extent of which was limited by the financial capacity of the citizens (narrow construction, lack of space in the medieval town, therefore the admission of new citizens was made dependent on the purchase of citizenship, i.e. land within the town walls.

The influx to the city soon increased to such an extent that the new arrivals were settled in front of the city walls behind piles (hence "pile dwellers"). In order to prevent the cities from gaining power, the sovereigns fought against the settlement of such pile dwellers.

bJ **Structure of the Bdrgeratand:** 1. patrizier was the early term used to describe the members of the old bourgeois families in the town, who alone occupied the town council and the town offices and used the town almshouse.

2. the merchants confronted them and fought for a say in the city administration.

c) **The** guild: 1. the craftsmen were organised into guilds. The root of the guild was either the community of the old Fronhof craftsmen (the so-called "Magisterium"), or more frequently new brotherhoods of craftsmen who had moved into the city.

2. The trade had its own specialisation. Only free German boys (in some fifths also girls) were accepted as apprentices, and after "completing" their apprenticeship they were "released" as journeymen. The journeymen then travelled for some time in order to get to know the trade in a foreign country; after completing his masterpiece, the journeyman settled down as a master craftsman, if the guild allowed him to do so.

3. The Zunft was a real labour union. It accompanied its members from the moment they were accepted as apprentices **to the last** gung; it supervised the production of the goods, regulated prices and wages, and often purchased the raw materials. Their aim was to create an economy of needs for the honourable, in which the guild master and his own could "find their bread in honour", but the buyer should not be taken advantage of.

4. Thecommunity was fierce, defended a part of the city walls assigned to it, had its own flag and patron saint, its own seal, its own jurisdiction and fixed meeting times
{Morning languages).

5. The Jews were not citizens, although they (**predominantly**) lived **in** the cities. They were considered **foreigners** under the king's protection.

a) The **slave trade,** the main source of income for the Jews in Carolingian times, had died out in Germany under the Saxon emperors (it continued in Bohemia and Poland until 1200). The Jews therefore had to reorganise.

b) **Usurers:** The ecclesiastical ban on lending money at interest (which emerged from the needs-based morality of the medieval economy and was advocated by the church for pastoral reasons) did not apply to the Jews alone as the only tolerated non-Christians: they were therefore anotherthereaded.

c) **Fence: In** 1090, Bishop Rüdiger Huozman of Speyer granted his Jewish community the privilege of being exempt from customs duties and quartering and complete freedom of trade throughout the empire: if stolen goods were found in a Jew's pawnshop, the Jew was allowed to swear that he had received them as a pledge. Evidence to the contrary by witnesses was expressly excluded. In this way, Jews were able to acquire stolen and robbed goods. With forfeited pawns, stolen goods and bungled goods (made by dishonest people or the Jews themselves from stolen raw materials), the Jews undercut the honourable trades; the latter therefore endeavoured to drive the Jews out of the city as far as possible {the so-called "persecution of the Jews"). The authorities, however, often protected and preserved the Jews in order to enjoy their protection.

8. The peasantry: Among the peasants there were: a} Free farmers; these included:

1. altfreiebauernsschaften on their own farm (Friesland, Tyrol, also numerous in the rest of the country); as Schöffenbarfreie (see p. 77) a group of these farmers approached the knighthood.

2. Pfleghaftesandbiergelden were free, but paid tax and interest to a lord of the manor, in return for which the latter had relieved them of military service (only occurred in Saxony, legal status disputed). p

3. Landsass: free people of peasant status who farmed other people's land as tenants.

All free peasants were rightly brought before the district courts.

bJ The UnTreien:

1. The unfortunates were: Farmers who had not been able to free themselves from the bondage of the Carolingian period (either former unfree or former free farmers of the Ger- man period). They stood before the lord as a community in the court co-operative of the former Fronhof association.

Providedevelopment:

In southern and southern western Germany, the Fronhof association was dissolved by converting the Pron and Schard services into monetary levies and issuing the Fronhof land in return for fixed payments. The Fronhof disappeared - a pure manorial lordship emerged. As their services were no longer required, the personal dependence of the unfree peasants was minimised; even where we hear of serfdom, it only included a few services and payments to the lord.

In Westfalen, the lords of the manor were forced early on to defend themselves against their powerful masters, who had their own right to the

Fronhof and on the landlord who was Farmers claim the
made. dependent on them by former Fron-
hol detached from the dependent farmersund leased. Burdened mit
of the administration of the villages, it took over in the 12th century.
He gave all the peasants their, usually small, plots, granted them their freedom in return, and then merged the plots (usually four into one) and gave them out as large tenant farms to individual farmers. These farmers later attained hereditary status (only a few areas in Westphalia and Lower Saxony were not affected by this development).

Folges: In southern Germany, the landlord became a pure rent earner - among the peasants, however, a far-reaching fragmentation of land occurred i forms of bondage were preserved.

In Westphalia and Lower Saxony, the manorial lordship retreated to a pension in some cases, but a hereditary tenancy arose on larger farms, and serfdom disappeared almost everywhere.

The farmers made redundant by this transformation mainly supported the settlement east of the Elbe.

The anagentialstatedserviceswerecommunicationallycommunicated,hadtheirstitutionsarecommitttedtothe Lord, but could only marry within their cooperative. They were bound to the church and obliged to pay taxes and duties.

Such bondage existed through birth (descent from unfree parents), contract (submission to bondage), in some regions through the marriage of a free woman to an unfree man, very rarely also through the marriage of a free man to an unfree woman ("If you kick my hen, you will become my cock").

2. The number of **landless serfs** declined sharply and eventually disappeared altogether. In the course of the great dissolution of the Fronhof economy through leasing and inheritance, they almost all joined the ranks of the settled unfree.

Where this was not possible, they remained without assets and obliged to pay unmeasured debts.

The unfree rightly stood before their lord's court, which itself consisted of unfree men who found justice there over their comrades; only the landless unfree were subject to the direct punitive power of their lord.

c} Peasantry as a profession: Free peasants and unfree peasants had in common the fact that they were not authorised to hire. The unfree peasant was also not authorised to bear arms. The free peasant carried a weapon, but had no right to feud (like the knight). Only the friesh and dithmarscher peasantry had the right to feud.

F. The feudal system

The feudal system developed from the fusion of the vassal relationship and the endowment of land.

1. Establishment of the feud: The feudal relationship is based on feud and liege. The feudal lord became a debtor to the feudal lord and offered him his feudal service. Feudal service could only be of a knightly character and comprised

Military service, court service, at most interest payments, never labour service.

The feudal lord vested the feudal lord with a useful fief (property, court, office) by handing over a fief symbol.

2. The nature of the fiefdom: since the fief was primarily given for military service, only knights and men of knightly birth (including those exempt from the aldermen's bar) were entitled to a fiefdom.

Jews, outlaws and excommunicated persons were absolutely incapable of taking fiefdoms.

Citizens and peasants were in principle incapable of feuding, as were lower clergymen and women, but could receive a fief by the grace of the sovereign if a feudal bearer who fulfilled the knightly feudal duties was provided for them.

b) The fief gave the enfeoffed a hereditary right {since Conrad II, see p. 66167). Most fiefs only passed to male descendants (sword fiefs), but some also passed to women (kunkel fiefs).

The renewal of the fief had to be applied for and granted within a year and a day. The fief could not be divided on inheritance; on the death of a fief holder, a distinction was made between two inheritance estates, the fief and the allodial estate.

Originally, only land could be a property, later all sovereign rights and offices associated with permanent income.

dl The lord's man had a fiefdom with a ding-licright right to the fief, could not sell the fief, but could sublet it in whole or in part.

el The levelopment was terminated by cancellation of the levelopment, cancellation of the levelopment in the event of breach of the feudal duty of loyalty and refusal of the vowed services.

fl In feudal disputes, the **fiefdom** reports decided who could withdraw the fief from the feudal lord in the event of breaches of trust.

The feudal courts were staffed by feudatories. At the court of the sovereign, they judged the sovereign's fiefs, while the royal feudal courts judged the flag and sceptre fiefs of the empire (the German kings lacked the power to punish the many breaches of loyalty of the German princes by withdrawing the fiefs and thus strengthen the power of the empire - as the kings of France skilfully did, who used the feudal courts as a weapon to defeat the territorial principality).

3. The feudal law: The Heerschild-ordnung (which disappeared again in the 14th century) determined the rank within the feudal system. The order of armies determined that a member of an armoury could only take a fief from a member of a higher armoury. If he took a fief from a fellow shield member, he himself descended one step.

The **Saxon rule** had the following order of armour: The king
raises the 1st armour.
The 2nd shield is raised by the clerical princes.
The 3rd shield is raised by the lay princes. The
4th shield is raised by the free lords.
The 5th military shield is held by the bailiffs and ministerials. The 6th
military shield is held by all those who have been raised by the
holders of the 5th military shield.
sign to the fiefdom.
The 7th army shield remains unnamed.

According to the Sehwabensplegel:
The king raises the 1st shield.
The 2nd shield is raised by the clerical princes.
The 3rd shield is raised by the lay princes. The
4th shield is raised by the high freemen.
The 5th military shield is raised by the centre
freemen. The 6th shield is raised by the
ministerials.
The 7th shield is raised by the remaining knights.

G. The co-operative switching right

The mitteralter was researchanged and stated. There were land-based and non-land-based co-operatives.

aJ The town was tied to the land: the basis of the town was the town charter. Thisa was based on the privilege granted to the town when it was founded or on custom. The town law regulated the coexistence of the citizens. The town was a corporation of the public regulation, it owned property, concluded contracts and regulated its own affairs.

The **Dorfgemelnde** was likewise a public authority with self-government. The organ of this self-government was the municipal assembly (Bursprake, Erbentag, Bauernköre). The head of the municipality was the Gemelndevorsteher (Honne, Bauermeister, Burmeister, Ewald, Vollmacht, Dorfammann, Heim- berger, Heimrat, Dorfgreve etc.). He was the executive body of the municipality and headed an office of the municipality.)

In larger villages, there was a council and individual village offices between the head of the community find community assemblies. The village constitution was co-operative and based on individual rights.

--) In Some communities had several community leaders,
"Foursome ", "Older men", "Zechpröpßte".

Ganerbachatten: Where heirs sit in undivided joint heirship remained {many times branches of a knight's family in the same castle), de- A co-operative was formed to manage the castle.

The **Markgenossenschatt:** Ancient common land rights of several villages (inherited from Germanic times) were administered by the Markgenossenschaft ("Haingeraide"). Those whose ancestors were already margraves (i.e. not the villages as communities, nor every newcomer to the village) were entitled to use and vote in it. The Markgenossenschaft had its own magistrate and was often headed by a respected **local** man (Waldbottl).

bJ Non-land-based co-operatives were those that had a fixed domicile but were not based on the management of land, e.g:

1. Guilds (see above),
2. Schidahrtsbruderschaften,
3. Knight's League--),
4. Dike co-operatives,
5. the numerous church co-operatives.

Principle: The mittelalters is that the suchering production only regulated that the undering production only regulated.

In principle, unless expressly stipulated otherwise, this meant that the following applied: Communication priviled by community, community by community, communication by community

(i.e. the reverse of today). Hence the colourful fragmentation of law in the Middle Ages. Time and again, generally applicable legal principles were interrupted by special privileges and customs of the countryside, cities and estates.

H. The rightsqueHen and rights development

1. The law of the Carolingian tent was not recognised (reason: lack of tradition due to inadequate, insufficiently distributed copies and collections of capitularies, the feudal system, the dissolution of the Fronhof constitution, the entire economic development passed over it. Theoretically, its validity was not questioned, nor was it formally repealed.

The further development of the law took place as customary law.

2. German legal ethics were also a major factor. The countion that law was something that could not be made or changed artificially,

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--As far as they developed co-operative traits and were not purely political associations.

but was contained in the world as divine content {not to be confused with the ecclesiastical jus naturale orientated on the Bible), was expressed many times, for example in the Sachsenspiegel:
"God is himself right."

The aim of the law was the preservation of peace, which is now understood strongly in the Christian sense, without the older concepts (domestic peace, rural peace, judicial peace) completely disappearing behind it. The law is more strongly based on the co-operative to which the individual belongs, most strongly in the country, least in the city. State and church could not be separated; the church not only demanded that the means of state power be made available to it, but canon law also influenced secular law - and vice versa.

3. The Bechtskrelse: The territoriality principle ("everyone is subject to the law of the land in which he resides") superseded the old principle of personality ("every man carries his rights with him").

Territorial rights took the place of the old "Leges barba- rorum". They often had a tribal character. In the north, for example, a circle of the Saxons developed alongside a circle of the Frankish rulers.

The Standesrechts brought special regulations and special rights for the individual estates. Each estate first lived according to its own law, which was different from the law of the other estates. The burgher lived according to town law, the feudal man according to feudal law, the ministerial according to service law, the peasant according to court law.

The law is unwritten and legalised until around the year 1000, followed by individual statutes of the towns, legal records and finally legal representations, none of which, however, cover the entire scope of the law.

4. The arbitrary sources of law: We distinguish:

aJ At first the king could enact laws on his own, then only with the consent of the Diet. Their **number** was not large and their influence on the development of law was not significant. They related to the enactment of laws and state laws.

were constitutional laws:

1. The liormser Concordat of 1122, which ended the investiture dispute.
2. Frederick I's Constitution of the regalibus of 1158, which dealt with royal rights, first applied only to Italy, then also to Germany.

3. The confoederatio cum principibus ecclesiasticie of 1220 under Frederick II and the statutum in favorem principum of 1231 {about both s. S. 70).

We have the following land transport stocks:

1. The Mainzer Landfrieden of Henry IV of 1106, which stipulated certain days of peace on which feuding and the use of weapons were prohibited.

2. The constitutio de pace tenda F-riedrich I from 1158.

3. Frederick II's Mainzer Laudfrieden of 1235, the first major land peace law to be discussed and promulgated in German, which also contained provisions on the organisation of the court courts, coinage law, church bailiwick, etc.

The con8titutio contra incendiarios of Frederick I of 1187 against the arsonists is also significant here.

There were no collections of the Relchsgesetze at that time, but Frederick II ordered in 1235 that the decisions of the court should be collected for later use, which has not been carried out.

b} Terrltorlal rights arose either from volcs-satces where there was no princely power, or as lands for stational requirements.

We are most familiar with the Frisian folk statutes, which were passed by free peasant communities. The most important of these are

1. the 1,7 küren, 24 land rights, 7 tlberküren and Bußtaxen of the East Frisians, applied in Frisian by sworn representatives at Upstalsbom near Aurich for the area of the allied East Frisian farming communities as valid law,

2. the Rüstring satchers around 1200,

3. the Westerlauwerschulzenrecht (12th century),

d. the Brokmerbrief {13th/14th cent,

5. the nordfriesical constitutions, including the Siebenharden being, adopted on Föhr by seven North Frisian Harden in 1432 - the last free peasant constitution in Germany,

6. There were also the landbuchers of the free Swiss valleys (Glarus, Schwyz, Appenzell, Simmental and Valais).

Orders issued by provincial princes'°} are:

1. the Kulmer Handfeste of the Grand Master Hermann von Salza of 1233 (renewed in 1256) for the German territory of the Order,

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--The Austrian Landrecht (older version from 1236, younger version about an age later), the Steiermärkisches Landrecht (around 1350) and the Ritter- und Landrecht der Grafschaft Berg (1355) are mistaken for a princely charter, but are in fact private legal records that later became law.)

The so-called "Rheingau Land Law" is a simple forgery.

2. the Salzburgische Landesordnunne of Archbishop Prledrlch III from 1328,

3. the Oberbayrische Landrecht of Emperor Ludwige the Bavarian around 1335 (renewed in 1346},

d. the Breslauer Landrecht of 1356,

5. the Landrecht of Drenthe {1412),

6. the Wirzburger Landrecht of 1435.

Given the medieval man's respect for the written word, it was not difficult to portray private labour as a valid right, and very new privileges as ancient rights, many of which dated back to Emperor Charles.

c} The town laws are either decrees issued by the king or the lord of the town at the time of foundation or later, or decrees of aldermen or private legal records, which were then generally recognised and became valid. With the suppression of the town lords, the towns' legislation in their own right increased. This gave rise to town ordinances (Willküren, "Schraen"}, supplemented by police ordinances issued by the towns.

Town law families developed because newly founded towns were often granted the law of an older town. The law of the newly founded town was then called
"Subsidiary law", in many cases the courts of the subsidiary city obtained legal advice from the parent city (before passing judgement1).

Thus the right of Soest was transferred to Lübeck, but the Lübsche Recht was transferred to numerous other cities on the Baltic Sea, as far away as Poland. The rights of Magdeburg, Cologne, Frankfurt a. M., Freiburg i. Br., Strasbourg and Vienna were similarly disseminated.

The city holes can be divided into the following groups:

1. Prlvilegien- and statutesbucher (e.g. Augsburg town book from 1276, Goslar statutes) - **these** contain the privileges and statutes of the town, as well as municipal statutes and ordinances. They represented the official collection of laws and regulations of the individual towns.

2. The "Urteils- and Schöffenbücher - these brought the judgements of the municipal courts, often independently of them "Wettebücher" with records on the administration of criminal justice and "Achtbücher" with entries on the city's expulsions.

3. Land registers (land, inheritance, pledge and currency registers) contained records of property transactions, pledges and inheritance cases.

--l Small towns often had only one town register, in which all events in the town were recorded in chronological orderi Larger towns developed a series of town registers early on.

4. Verwaltungsbuchert "Denkelbücher") brought Aoitans, Council lists thus contained municipal law alongside treasury and building matters.

We distinguish between: Official amendments to the city charter { "Will- küren"}, occasionally also called "Welchbild", initiated by the city administration itself.

Prlvatarbelten llber Stadtrechte: Among them stand out:

1. The Sächsische'Weichbild, consisting of two parts, the Magdeburg Aldermen's Law, a collection of legal documents issued by the Magdeburg Aldermen's Court to Breslau (finalised in 1295), and the so-called Weichbildrecht {Reehtsbuch von der Geriehtsverfassung, completed around 1250), which contains general legal doctrine, Magdeburg law and an overview of the law of the Wends, as well as a world chronicle.

2. The Blume von Magdeburg, a collection of Magdeburg aldermen's judgements revised by the Roman-educated jurist Wurm.

3. The systematicleschen recht (Magdeburg legal notices after Magdeburg-Breslau oaths and Bree- lau aldermen's judgements); derived from this is the Glogau law book.

d. The "alte Kulm", a revision of the systematic law of lay judges in Prussia.

5. The Kulmische Rechts (created in Danzig around 1450 and valid in Prussian cities).

6. The town hall of the city of Freiberg in Meissen (created between 1296 and 1307).

7. The Recourtsbuch Ruprechts von Freising.

8. The Rechtbuch after Distinctions from Meissen; the Eisenach law book was in turn influenced by it.

9. The Brünner Schöffenbuch.

10. The Berliner Stadtbuch (from 1397).

d) The fetching and dunning rights: The fetching and dunning rights are recorded customary law; they go back to the fact that the landlord's officials had the customary rights of the heirs and the lord of the manor surveyed and recorded by sworn heirs. Here, too, we find "Weistümerfamilien".

The reason for the record was to regulate the relationship between landlord and peasant (the Leg familiae Worma- tiensis ecclesiae of Burchard of Worms [1023] was written very early on).

WelstCmer: In the villages we find numerous records of rights that were made by the village community-').

-*) Such village rights were already known in the 13th century: depending on the area, **they were** called: Weisthümer, Dorfeinigungen, ONnungen, Belie- bungen, Kühren, Kören, Ehehaftrechte, Freiheiten, Statuta, Rullen, in manorial villages Rodeln, Rotteln, Rödel (from Latin rotulaJ, then also Urthrechte (so in the Black Forest). Their basis was everywhere the old hereditary custom; a confirmation under land law was originally not necessary, a landlord's confirmation only insofar as landlord's property or landlord's rights were affected.

The laws of servants have been recorded relatively rarely. Among them, the Dienstmannenrecht von Ahr (115Ml164) and the Dienstmannenrecht der Grafen von Tecklenburg (around 1300) stand out.

The cases are numerous.

e) Mining law was of great importance. German mining law spread throughout Europe.

The most prominent of these are 1. the Iglau Mining Law of around 1300, 2. the Freiberg Mining Law (1297-1307), 3. the Jus regale montanorum of the Bohemian King Wenceslas II, 4. the Schneeberg Mining Law {1297-1307), 5. the Goslar Mining Law {l35M1379).

f} Delch rights originated earliest in the Netherlands.
The Bremen dyke law dates back to 1499.

g} The feudal rights: The Lombard feudal law was transferred to Germany. German feudal rights developed alongside it").

J. The Bechtsbtlcher

The law books are the works of priestly privatpersones containing records of German rights and customs, the oldest and most famous such record being

1. The Sachsenspiegel, written between 1220 and 1235, is the work of the Saxon shoemaker and knight Eike von Repgow (today Reppichau near Dessau), a Schöhenbarfreier with a Latin education, but completely in the tradition of German legal thought.

a} **Zezt:** The Sachsenspiegel was originally (in a version no longer extant) in Latin, but was then translated into Low German by Eike, its author, at the request of Count Hoyer von Falkenstein. (Nu danket allgemeine, deme von Valkensteine - der Greve Hoyer ist genant - daz an dusch ist gewant ditze buch durch seine bete - Eyke von Rep- gowe iz tete. -")

b) Classification: The Sachsenspiegel is divided into two books: Landrecht and Lehnrecht.

The Landrecht is the most important part (it was originally only divided into articles; the current division into three books was created by the glossator Johann von Buch).

--The Libri feudorum are a private presentation of Lombard feudal law, were then glossed by the glossator Accursius (see there), and appended to the Corpus juris. The area of Saxon law remained unaffected by the Lombard feudal law of the Libri feu- dorum, as its feudal law was regulated in the Sachsenspiegel (see there).

The Landrecht has four prefaces.

1. The Praefatio Rhythmica, a poem whose first part **is by Eike, while** the **second part** is **later and** defends the Saxon Mirror against its critics.
2. The Prologua {by Eike), beginning with the words: "The Holy Spirit's minne, he strengthens my senses."
3. The Textus prologi, the immediate introduction to the law book.
4. "Von der Herren Geburt", a treatise on the Saxon nobility, was written later.

The Lehnrecht is preserved in the old Latin text and is younger than the Landrecht. It consists of a rhymed Latin part and a prosaic German part.

c} Contents of the Sachsensplegel: The Sachsenspiegel deals with the whole of Saxon law, constitutional law, criminal law, private law, the court system and the legal process, the latter only in outline. It does not deal with municipal law, service law and court law, as these were regulated.

His character is loyal to the empire and national, he defends the right of the emperor. In the controversial issue of the two-sword theory, he advocates the doctrine that the emperor has his sword directly from God and does not receive it in fief from the pope. Eike takes pleasure in protecting and strengthening old, rooted German law, thus he favours the free aldermen as the bearers of popular jurisprudence and advocates judicial duels ("kampeliken anspreken"). Fourteen articles of the Saxon Mirror were condemned by Pope Gregory XI in 1374 at the instigation of the Augustinian monk Johannes Klenkok.

d} Significance of the Sachsenspiegel: The Sachsenspiegel achieved a high reputation. Although it was originally a private work, it came to be recognised as a code of law in the Saxon territories.

The Saxon Mirror has the highest merits for the German East German state. By stating: "Where a village is founded from wild roots, the people should be given hereditary interest", he created the framework for the favourable legal position of the German peasants, who were set up as free people with hereditary hooves only against payment of hereditary interest (i.e. they did not need to buy the land1).

In intellectual terms, Eike von Repgow's work is of outstanding importance. Never before or since has the Low German language been raised to such heights of sharp legal thought and concise and effective formulation. In many respects, Eike von Repgow is one of the greatest minds of the Middle Ages.

e} The family of the Sachsenspiegel"): Since the judicial procedure of the Sachsenspiegel required closer organisation (there was already the threat of new fragmentation and intrusion of canon law), the law), the the the former lord of Brandenburg Nikolaus von Buch and probably his father Johann von Buch created the

1. "Richtsteig Landrechtß" (around 1350), a precise civil procedural code for the Sachsenspiegel.

2. Nlkolaus von Buch also created a Gloaae on the country's history.

3. An unknown author then wrote a "Richt-steig Lehnrechtß" and a gloss on land law. The town clerk Nikolaus Wurm of Neuruppin then revised the gloss of Johann von Buch and the gloss of the unknown author - strongly in the Roman legal sense. His reworking was in turn authorised by Brand von Tzerstede and Dietrich revised by Boxdorf.

1) **Influence of the Sachsensplegel** on the City laws: The Sachsenspiegel significantly influenced the city laws, so:

1. the Sechilische Weichbild;
2. daa C-örlitz law book;
3. the law book according to Distinctions ("Vermehrter Sachsenspiegel a processing of the Sachsenßpiegel with the city law of Goslar).
4. Nicolaus Wurm wrote the "Blume des Sachsenspiegel" and the "Blume von Magdeburg" (around 1385).

The Sachsenspiegel also gave rise to a number of alphabetical adaptations ("Slotel", Abecedarien, Remissorien etc.). The Sachsenspiegel thus developed a rich literature that facilitated its implementation in court. It was translated into Polish.

2. Other law books: a} The Schwabenspiegel (oldest manuscript from 1287) is the most important of the southern German law books, written by a clergyman (in Augsburg), and also represents the papal point of view in terms of constitutional law. Carolinian law (Lex Bajuvarorum and Alamanorum), Roman and canon law are related in it. It has been translated into Latin, Czech and French'°).

b) The **"Spiegel** deutscher Leute" was written by an unknown author; it is a translation of the Saxon mirror into the Swabian dialect with the addition of the Bible, Roman law and some imperial laws. It

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-In addition, there were smaller law books on the Sachsenspiegel, such as the "Cautela" and "Premis" (muzzle and gag) of Hermann von Oesfeld, an instruction on behaviour in court.

--The family of the Schwabenspiegel includes Ruprecht von Freising's Land- und Stadtrechtsbuch.

is the work of a German patriot who wanted to create a standardised German law, but his knowledge and skills were not sufficient.

c} The Klelne Kaiserrecht (written in Hesse in the 14th century), also known as the "Frankenspiegel", aims to present imperial law, presents imperial law in four books (court proceedings, private law, criminal law, feudal law, municipal law) and deals in particular with imperial servants and imperial villages.

II. Urlzuaden- uad Pozzaelwesen

In order to represent their case in court, formulae are written for laymen by authors with legal expertise. The Baumgartenberger Formelbuch (from Upper Austria) is well known. The official formulae of the Imperial Chancellery were collected in the Summa curiae regis.

Deeds: The royal deeds were now authenticated by witnesses (from the 13th century, the princes sealed them with hanging seals instead of the seals previously affixed to the deed).

The private deed system took a back seat at first. The evidential value of the deed was denied. It was only as education progressed that the validity and probative value of deeds became established again. It was generally accepted that deeds had to be sealed ("letter and seal "J.

Early on, the king, princes, cities and lords of the court obtained the right to publicly **notarise** documents. This gave rise to the office of notary, first in Italy. The Imperial Notarial Code of 1512 gave deeds recorded by notaries the probative force of public deeds"'). The lahaber paper (in Talmudic law: "Mamre "l, while German law considered the transfer of a claim to a third party to be inadmissible; so first came the execution clause, to whom the creditor "gives this letter for collection", then the order clause ("To you or whoever has this letter with your good will", finally the pure holder clause ("Anyone, with your good will").
to whom this document appears in his hand").

The bearer paper arose from commercial transactions in general, but especially from the need of the Jewish communities to quickly transfer monetary claims.

-') A peculiar feature was the carta partital. The issuer wrote his declaration twice in succession on a sheet, then signed the first declaration - then the sheet was cut through, jagged or wavy, each party received half - the two halves put together then gave the authenticity.

6. 7e11

The State reCt of the bobea I\dIttelate

A. The pouii ca constitutional **development up** to **Charles IV.**

Rudolf I.. Graf von **Habsburg (1273-1291)** was elected by the electors to end the period without an emperor. A resolution to reclaim the estranged imperial property remained fruitless. By defeating King Ottokar II of Bohemia on the Marchfeld, he acquired Austria, Styria and Carniola for his house; Carinthia came to his brother-in-law Count Meinhard of Tyrol, and both lands were later united with the Habsburg dynasty. He proclaimed orders of peace in individual parts of the empire, restored the sovereignty of the empire over Burgundy (except Provence and Avignon) and rendered outstanding services to the peace of the land.

Adolf of Nassau {1292-1298) was deposed by an assembly of princes despite his efficiency; Albrecht I. von Oster-reich (1298-1308) was murdered at an early age. Heinrich VII, Count of Luxemburg (1308-1313) recognised the Schweizer Wald-states as immeasurable. After his death in Italy, civil war broke out, the papal party nominated the Hab8burger Fried-rich von Osterreich (131M1330), the national party Ludwig den Bayern (1314-13471 as German king. Frederick of Austria, captured by Louis the Bavarian in 1322, is recognised as co-king by Louis the Bavarian and dies in 1330.

The pope contests the legitimacy of Louis the Bavarian's election as king and reasserts his claim that a German king and Roman emperor requires confirmation by the pope. At the Electoral Convention of Renee in 1338, the German electors decided that a German king elected by them had a legitimate claim to the imperial coronation and that the election could neither be reviewed by the Pope, nor did it need to be confirmed by him. The imperial law passed on the basis of the Electoral Convention of Rense
"Licet juris" then expressly stated that the election alone was decisive for the lawful exercise of royal power.

Carl IV {from the House of Luxemburg **1347-1378),** originally set up by the papal party, ruled the realm well from Bohemia and laid the foundations of a Luxembourgian house power.

B. The Golden Bzz1le

In the Imperial Basic Law of the Golden Bull of 1356, passed at the Imperial Diets of Nuremberg and Metz, Charles IV had the constitutional law of the Empire summarised").

Electors enjoy the following rights on the basis of the Golden Bull:

1. The electoral dignity is attached to Courland.
2. The Kurland is indivisible and is inherited according to the law of primogeniture.
3. The electors are holders of the archducal offices and are above all other princes.
4. The electors must give their consent to war and peace and to any disposal of imperial property.
5. The electors are no longer limited in their jurisdiction.
6. They have the privilege of--) de non evocando: no one may appeal directly to the king by bypassing their courts.
7. They have the privilege of--) de non appellando: no one may appeal to the king against a judgement of their courts.

The Archbishop of Mainz, as Arch-Chancellor for Germany, is the last to vote.

C. The development of pollHch constitutional law up to uaxii "iuan I.

Wenzel (1378-1400) is deposed by the electors for incompetence. Ruprecht von der Pfalz (140 1410) is defeated in a campaign in Italy and dies young. Siegesmund - Wenceslaus's brother - (141 1437) fights through the Hussitenkrieg: in his time the inconclusive Kirchenkonzil zu Kon-stanz --l takes place, and he transfers the Margraviate of Brandenburg to Frederick, Burgrave of Nuremberg. Albrecht II (143M1439), from the House of Habsburg, dies young. Friedrich II (144 1493) stands idle in the face of the numerous feuds and dissolution phenomena in the German Empire, but acquires considerable entitlements and privileges for his dynasty through skilful marriage politics. In 1448 he concluded a treaty with the

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--) The Kaiserwahl was finally assigned to the seven electors. transferred. Three ecclesiastical electors: Archbishop of Mainz, Trier fro
and Cologne; four secular electors: King of Bohemia, Count Palatine m
at
Rhine, Duke of Saxony-Wittenberg and Margrave of Brandenburg.

--These two privileges have always been vigorously opposed by the estates.

--) From the Thronerledign to the Königswahling
1. for the Franconian lands the Count Palatine of the Rhine, 2. for the Saxon lands the Elector of Saxe-Wittenberg Imperial Governor.

--Its purpose was to eliminate the schism in the church, to improve church conditions and to put an end to heresies.

The Pope **signed the unfortunate "Wlener KonLordat", which** made all reforms of the state in the ecclesiastical field in Germany impossible).

Masimilian I (l49M15l9) attempted to regroup the imperial power. At the Diet **of Worms (1495)** he called:

1. theEvigenLandfrieden-') (elimination of the feuding areas),
2. AReicour,
3. the Reichskamergericht {first in Frankfurt, then in **Speyer, since 1693 in** Wetzlar).

The attempt at real imperial reform in the German Empire failed^J. Imperial police regulations were planned under Max Imilian, but only implemented later.

7. Part

Basic features of the German Prlvatrecbt

A. **The nature of German private law**

German private law was not uniformly summarised in the Middle Ages, but was extremely fragmented; private law can be classified according to the law books (Sachsenspiegel,

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--Cf.: t436, at the end of the Husslten War, the treaty regulation of the "Prague Compacts" had created a Bohemian national church with free preaching in the Czech language and subordination of the clergy to secular jurisdictioni in France, the National Synod of Bourges had excluded all foreigners from French benefices and replaced papal influence in French bishop elections with the influence of the French king; In Spanian, in 1482, the Pope had expressly renounced any interference in the ecclesiastical administration of Spain, and bishops were to be elected only on the proposal of the government; the situation was similar in England. Only in DeutSchland was this strengthening of state control over the Church, which was gaining ground everywhere else, prevented by the Vienna Concordat.

-') At the ReichstagzuKöln (1512), the empire was divided into ten territorial kingdoms: 1. the Austrian, 2. the Bavarian, 3. the Swabian, 4. the Frankish (Main area, Nuremberg county), 5. the Upper Rhine (Lorraine, Hesaen and others),
6. electoral Rhine (Mainz, Trier, Cologne, Palatinate), 7. Burgundian {Low Countries), 8. Weatphalian, 9. Lower Saxon (Brunswick, Lüneburg, Lauenburg, Holstein, Mecklenburg and others) l0. Upper Saxony (Saxony, Brandenburg, Pomerania, etc.) Bohemia (with its neighbouring countries of Moravia, Silesia, Lusatia) and Switzerland remained outside the district constitution; the Order of Prussia was under Polish sovereignty.

--At the Imperial Diet of Augsburg in 1500, a so-called Reighsregiment was created with its seat in Nuremberg, which was to consist of twenty princes and **meet** under the Emperor or his **deputy;** it was dissolved again in 1502, re-established in 1521 for the duration of the Emperor's absence, and finally abolished in 1530.

SchwabenspiegeJ etc.), according to the land laws and town laws, as well as the common law regulations of German private law.

Nevertheless, German private law shows certain uniform features everywhere, which were formed on the basis of Germanic law under the influence of the law of the Frankish monarchy, ecclesiastical law and the legal developments of the Middle Ages:

aJ The **co-operative** is at the centre of German private law, to which the concept of the . The concept of the rights of the individual was not alien in the Middle Ages, but it saw the individual much more strongly in the context of his various co-operative ties.

b) In German private law, privilege and disorder**, right** and duty are mutually opposed. Every right has a duty, every rule an obligation to protect and care.

cJ The principle of **loyalty** ("faithful master - faithful servant") also regulates and determines contractual relationships.

dJ **Honour** is based on faithfulness. A disloyal person is neither admitted to office nor to oath-taking.

eJ The idea **of ofleacundtgLelt** is maintained¡ important legal transactions are therefore carried out in front of an assembled congregation or in court or entered in public books.

1) German law generally protected the worker more than the owner. It favoured lending relationships and gave the lender, who used and worked the object, a right in rem to the object {tendency to inheritance of land lending relationships). The purchaser was entitled to the fruits of the field {"He who sows, mows").

gJ It follows from the principle of obviousness that violation leads to loss of rights: Anyone who does not assert his right and does not object to a situation that violates his right loses his right.

h) Rights must be exercised in order to remain valid. The farmer who does not cultivate the land lent to him loses his right to it ("If the grass reaches the knight's spurs, then the subject has lost his right").

B. The old German law of persons

1. Legal capacity: In the Middle Ages, only the free member of the people had full legal capacity. The prerequisite for legal capacity was the living birth from a mother of free status. The child in the mother's womb was regarded and protected as an expectant human being; inheritance shares were suspended until its birth, and it was itself protected against injury with half the value money"). A fresh birth was be-

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--l The difference: Roman law regarded the child in the mother's womb only as "part of the intestines".

tion by witnesses, documents; with the advent of baptismal registers and church records by these. Legal capacity ended with death. Death was treated the same:

1. The freedom (of the Germanic period).

2. Dea Reiches Aberacht'-).

3. The "bürgerliche Tod" (from the English and French law), as a punishment against absent criminals worthy of death only penetrated individual German rights.

4. The Kloatertod terminated the proprietary legal ability. Upon entering the monastery, the assets of the The monk's succession was opened; he was no longer able to acquire.

5. In the event of disappearance, provisional succession took place. If the missing person returned, the heirs had to distribute the estate").

Later, a period of 10-30 years (Silesian system) developed: if the missing person did not return home within this period, the inheritance of his property could be cancelled.}

2. Restrictions on legal capacity: Legal capacity could be restricted according to the aspects of property, property rights, honour and property rights.

a) The legal capacity was limited due to the lack of a legal basis for marriages between persons of different status ("mis"-marriage). The children followed the stronger hand. An early exception was chivalry ("Knight's wife has knight's right"). Only those of the same rank could be the first mouth, heir and judge of each other and of each other").

bl Legal capacity was restricted for women due to the law. In the Middle Ages, they could not hold a pre-manship, could not acquire land in estates that were hereditary in the male line, could not hold a sword fief, and had to provide a feudal bearer to fulfil the feudal duties.

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*°) In the event of a breach of the peace, the king could impose the eight against a man: this deprived him of the right to appeal to the court and set him free for any feud; if he did not redeem himself within a year and a day, he forfeited the realm; he was considered dead, anyone was allowed to kill him, his property fell to his heirs, his fiefdom to the feudal lord. ") Only when he had been missing for 100 years, or 70 years in Saxony, was the Acquisition of inheritance as final.

'-) The death of the missing person developed in the 18th centuryti the missing person was summoned; if he did not report, he was considered dead. Until then he was considered alive.

*-) So peasants could not rule over knights, ministerial knights could not judge the princes of the realm. Demand for a "court of equals".

c} The legal capacity was limited due to a lack of honour. The Middle Ages made a difference:

t. **mrloslgkelt: It could arise** from: (iible way of life): this rendered incapable of legal, civil and feudal rights.

"Bescholtenhelt" for the acquisition of the guild certificate.

2. Fidelity offence: The person declared dishonest for breach of trust could not hold public office and could not take an oath.

Exclusion from the guild: **this** resulted in expulsion from the co-operative (guild, guild).

3. Bechtloslgßelt: This meant that the person without rights could not become a judge, an oath taker or a witness (but could of course appear as a plaintiff or defendant). The person without rights did not acquire a fief, civil rights or guild rights; he did not receive a wergeld, but at most a mocking wergeld (broom and sherel. The lawlessness occurred as a polge

aa) achimplication (on neck and hand or skin and hair) or

bb) as a pole of **a** sacrilegious **profession** (executioner, harlot, covering). The church often enforced that illegitimate women were also regarded as "recht- loa" (in this sense)1

d) The legal capacity was restricted due to a lack of of the bed:

I. The blind, mute, handless and footless were incapable of inheriting under feudal law (but not under land law) because they could not fulfil the duties of the feudal estate.

2. Miscarriages, cripples, lepers and people suffering from leprosy were ineligible for inheritance according to land law and feudal law').

3. The right of foreigners: The Middle Ages no longer denied legal capacity to all foreigners, but only to non-Christians (with the exception of Jews) and, at the instigation of the Church, also to heretics who had been transferred.

In some places, foreigners residing in the territory of a sovereign were claimed by the sovereign as his own people ("Wildfangrecht"}, especially the Count Palatine of the Rhine made this claim. The foreigner could only acquire land if he took the oath of allegiance and submitted either to the general jurisdiction of his place of residence (Landsassiatus plenus) for all his legal transactions or at least for the legal transactions relating to the acquired land {Landsassiatus minus plenus). Foreigners residing in the land had to pay a portion of any inheritance that fell to them to the prince first (abschuss, first inheritance tax). The right of the sovereign to seize the estate of the stranger was prohibited throughout the empire by Frederick II in 1220.

4. The special rights of the Jews: The Jews had come to Germany as slave traders during the Carthaginian era;

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*-l Sachsenspiegel 1 4: "Uffe altvile (probably people who "have too much", i.e. the mentally ill) unde uffe twerge erstirbet weder len noch erbe, noch uffe kropelkint."

Legal restrictions only applied to them from an ecclesiastical point of view.

aJ Plain Jewish law: As the Jews did not believe in any other God than the Christians, the Church granted them protection of their confession, their lives and their property. It endeavoured to prevent Jews and Christians from becoming too close to each other in order to prevent conversions to Judaism. For example, it prohibited the marriage of Christians with unbaptised Jews, the employment of Christian servants by Jews and living too closely together (communal living, eating together, joint celebrations with Jews). The ecclesiastical restrictions were enforced with varying degrees of rigour in the different centuries.

bJ The money lending principle: The church forbade all Christians to lend money at **interest.** It did so for pastoral reasons, as it saw lending money on interest as usury, a "sale of time", "God's iat" and an incentive to idleness.

This prohibition of interest acted as a privilege for the only tolerated non-Christians, the Jews: the Jews were the only ones who were allowed to pay interest.

cJ The fence privilege: Loans were now mostly granted against pledge. In 1090, Bishop Rüdiger Huozman granted the Jews of Speyer the privilege that if stolen goods were found in a Jew's shop, the Jew could swear that he had received them as a pledge. In this case, the owner had to pay the sum that the Jew stated as the loan amount for this pledge.

Folge: All stolen and looted goods were brought to the Jews, who were thus granted a fencing privilege. From their earnings, the Jews were able to pay high protection money.

dJ The Jewish Privileg **of Worms** Friedricha II {1236) became a general Jewish law. It designated the Jews ala
"chamber servants of the Reich" and placed them under increased protection compared to the German population.

In the course of time, the Emperor**'s Jewish regime** was transferred to the electoral princes for their lands, and then to other sovereigns.

@ The **Jewish quarter** was a legal community of public law, it governed itself through its rulers (Parnessim) according to the Jewish law (Talmud).

5. The **capacity to act:** a} The capacity to **act** began with maturity. In contrast to the Germanic period (which linked maturity with the ability to act)

'-) The Jewish law was based on the fundamental idea that only Jews had real property and a real marriage, and that the property of non-Jews was at the mercy of all Jews - "all Israel vouches for each other". The Jews had their own rabbinical courts; in some places Germans also had to sue Jews in the Jewish courts1 and the founding of its own fire and smokeJ the Middle Ages") knew fixed dates early on.

bJ The recommendation of the recommendation was about:

1. of women: This restriction fell away more and more in the Middle Ages: in the towns, women who ran their own businesses acquired full legal capacity; finally, the restriction on legal capacity only remained in some areas for unmarried daughters who lived in their father's house.

2. In the case of an internations, legal capacity was limited as far as testamentary dispositions or dispositions of land were concerned "J.

The mentally ill were given a guardian early on; their closest relatives had to take **them into care** (Sachsenspiegel I, 4). Prodigals were originally imprisoned and punished, but were not given a guardian (this only came about via the Roman law).

c) The Liability of ChuId: The Middle Ages also limited liability for damage caused in terms of time. Children under the age of seven were considered incapable of fault"}.

fi. Personal rights: In the Middle Ages, people had a coat of arms, a coat of arms and a name; this protected them in their dealings, while at the same time their name, coat of arms and house mark represented a part of their honour; their violation affected them personally (breaking of the coat of arms in the event of a dishonourable death sentence).

aJ The **pamlllen or house marks,** almost always originally runic signs with a sacred meaning and a relationship to the clan name, survived everywhere in the farming community and were primarily property marks in the Middle Ages. Artists and craftsmen used their mark as a sign of origin (from which today's trade mark has developed).

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*-) The Sachsenspiegel distinguishes by age:

"under his years" - child up to the age of 12 for whom guardianship was required,

"under a days" - young person between the ages of 12 and 21 who could voluntarily remain under guardianship'i

"in his day" - adults from 21 to 60 years of age;

"above his days" - Greia from the age of 60 was free to choose a guardian.

") The knight, who was no longer able to mount a horse, was also unable to dispose of feudal lands.

'-) The law of Lübeck had a very nice way of determining the culpability of children according to their understanding of the meaning **of the** offence for which they were liable: the judge offered the child an apple and a coin - if the child grabbed the coin, it was considered to have understood the meaning of the offence it had committed.

bJ **Coats of arms** originated from the house mark; most coats of arms were not conferred by a prince but inherited from the family. Corporations, towns and universities also bore coats of arms. The coat of arms was not exclusive to the knighthood - any free man could bear a house mark or a coat of arms. The difference between the two is fluid. Thus we find building families (for example in the Holstein Elbe marches and in Friesland) bearing coats of arms, knights' coats of arms that bore nothing other than the house mark. Thus we also find numerous bourgeois coats of arms. In addition to the coat of arms on the shield, the knight also bore the helmet with crest ("born to helmet and shield").

c) The **name**: Germanic times had once had only one name (usually composed of two words, promising glory) (e.g. Wiegbold m bold in battle, Hildebrandt m burning for war). With the arrival of Christian baptismal names (of Hebrew, Greek and Latin origin), there was an impoverishment of the name treasure: it became necessary to distinguish people by forming surnames alongside their baptismal names, either from the first name of the father (Matthiessen m son of Matthias, Köbes m son of Jakob) or by using the origin of the surname.
(Hesse, Böhm, Frank) or emphasised the profession (Baker, Schröder, Tailor, Shoemaker), occasionally simply denoted external characteristics (Lange, Kurz, Groß); often the name contained a mockery (Spitznas, Hinkepot) or an exhortation (Besserdich, Fromm, Gottgetreu). Noble names are mostly derived from property.

C. The old German contract law

1. The legal transaction: A legal transaction is determined by the declaration of intent. Medieval German law also recognised separate legal transactions (based on the declaration of intent of an individual) and more separate legal transactions (contracts, agreements). It recognised legal transactions subject to a condition precedent (e.g. depending on the consent, the "vullbort" of third parties) and those subject to a condition subsequent. The decisive factor was the expressed will. There was no avoidance on the grounds of error ("one man - one word"). Fictitious transactions were valid; it depended on the declaration made. Contracts concluded under duress were voidable. Otherwise, they could only be contested on the basis of a form, legal inadmissibility and a lack of consent. The right to contest (rechte wedersprake) was limited in time; anyone who "concealed" their identity lost the right to contest. The form was still strictly adhered to; only the right formula gave the transaction the right validity. The Middle Ages favoured formalism because it ensured that the transaction was free of doubt.

2. The assertion of rights: Everyone was free to exercise their rights as long as they did not conflict with the rights of others. As early as the Middle Ages, the two

The tendency was to leave the legal power of the individual as unrestricted as possible or to bind it to the community through consideration. In principle, greater consideration was shown towards members of the same community (the same clan, guild, town, neighbourhood) than towards strangers. In general, medieval man was tougher and more selfish in enforcing his rights to the letter than man in the modern city with its multiple considerations.

3. Representation in law: Representation existed as born and born:

a} The right of representation was the power of the father over the child, of the guardian over the ward.

b} Gecorened representation was:

1. The treuthand: The trustee was given the right to dispose of the estate in his own name as if it were his own, but he was only allowed to carry it out in accordance with the settlor's instructions. (The trustee of the deceased evolved into the executor of the will).

2. The principal, who sold the principal's goods in his own name, was the owner vis-à-vis third parties, but the ownership of the commission goods remained with the principal. The legal transaction works directly for and **against** the principal.

4. the contractual obligation: In the German law of the Middle Ages, a debt arises from a legal act, from a legal act or from other legal acts.

a} A legal transaction gives rise to a security in the

1. **Beal contract:** The contract for performance of the contract of sale is a contract for payment in rem. In the case of a real contract of obligation, the party who has received the object {e.g. borrower) must pay the debt. e.g. borrower) must return it. In the case of a non-reciprocal debt contract, fulfilment is initially concurrent {exchange, cash purchase). Later, the party who has received is obliged to fulfil the consideration within an agreed or customary period of time {purchase on borrowing).

The contract: Since the principle was adhered to that performance and consideration should be made step by step as far as possible, it became customary for a partial performance to be given as soon as the contract was concluded. In many cases, this partial performance became a purely fictitious performance--). Until receipt of the actual performance, the giver of this partial performance ("Arrha") could withdraw from the contract, but then lost this partial performance.

2. The **pormal contract** is younger than the real contract. It no longer involved performance for performance or performance for partial performance.

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n) When buying a horse, for example, the seller had to pay for wine, which was drunk together; the contract was not considered finalised before that. similar to this was the "Mietstaler", which the servant received before taking up his position as a sign of the conclusion of the contract.

he was more often than not obeyed as a pledge **of allegiance:** in solemn oath form " with speaking mouth and outstretched bodily fin-
The "gladly" were promised a later performance. The handshake served as a pledge of the hand (for the perjurer was given a pledge by the executioner). cut off the hand).

b) Unauthorised action gave rise to a debt obligation

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1. by blo Because of the schade: it was not a question of intent, but of the success of the damaging act. Mere coincidence, however, did not result in an obligation to pay compensation.

2. They were liable for any damage caused by their own animals, property and the members of the household subject to the manor.

5 Content of the debt: In medieval German law, the debt could also consist of an act or omission. The debt was holschuld, the creditor had to obtain the object owed from the debtor. Geld-schulden were already early on bringschulden.

G. **Default:** The creditor's default occurred upon expiry of the day specified for fulfilment. The creditor **had to** formally declare the default. The consequence was a default penalty"}. Later, compensation for late performance became customary. In many cases, the creditor was also allowed to collect the debt from a Jew at the debtor's expense in the event of default ("Auf Schaden nehmen"). The Middle Ages were **late to** recognise a right of withdrawal in the event of debtor default.

In the event of a claim by the creditor, the debtor was allowed to either

1. the lease of the door of the community and leder-legen

2. or sell the property and deposit the proceeds with the court or council.}

--Since the medieval church forbade interest, ao there was no interest in the

no interest on arrears in the true sense of the word. This was helped early on: it was already agreed in the debt contract how much "damage" the creditor was to be reimbursed if the debt was not repaid on time. This was soon helped even further. Right at the beginning of the debt relationship, the repayment obligation was set for a day very close to the conclusion of the contract, sometimes even tomorrow, but it was stipulated that for every year that the debtor was late with repayment, he would have to pay the creditor a default damage of one per cent. In this way, the zine forbidden by the church had been "back-filtered" as a loss of interest.

-') Craftsmen, shepherds and trustees had a right of retention on the objects handed over to them on account of their wages and their reports.

7. End of the obligation: The obligation ends through fulfilment, set-off and remission.

C. The individual debt relationships

a} Ancient German law did not recognise a gift without a counter-gift. Every gift required a counter-gift. As long as the counter-gift was not given, the gift could be revoked. The gift could be reclaimed if the recipient was ungrateful").

b} Barter originally took place step by step. Purchase developed from it when the monetary economy replaced the previous economy in kind.

c} The **purchase:**

1. The contract was a mutual real contract and was fulfilled step by step.

2. The contract of sale related to the delivery of non-present goods. It was concluded by formal contract, often by the surrender and acceptance of an arrha, only later in the high Middle Ages by informal agreement of will--).

The greective present : The doctrine of kirehen and popular conviction jointly developed the doctrine of justum pretium, the "just price"; every commodity was to be sold in such a way that the producer could survive in honour, but the consumer was not overcharged. This is the origin of the numerous price taxes and market regulations of medieval towns, guilds and provinces. Intermediary trading profits were combated wherever possible.

3. The seller's warranty ' The seller had to provide the buyer with a warranty for the item. If a third party asserted rights to the goods, the seller had to take legal action against this third party. If he did not, he was considered a thief and had to pay the buyer compensation and a theft fine.

4. A warranty was only slowly developed. Although the seller had to deliver a faultless item in good faith and in accordance with the spirit of the transaction, as soon as the buyer had accepted the item, it was concluded that he had approved it and the seller was then exempt from liability (see "a purchase is a purchase"). If the seller fraudulently concealed defects in the goods, the buyer could rescind the contract. A fraud penalty was also incurred.

5. In the case of sales, a right of conversion was found early on (as the main defects were often not readily recognisable).

6. The risk of loss (accidental destruction or deterioration) was transferred to the buyer with the transfer of the item.

--On the death of the gifted person, it reverted in some rights to the giver. "Right of return".

^) In many cases, the medieval town laws combated the "pur- chase", i.e. the buying up of raw materials and foodstuffs on a large scale outside the town gates. The aim was to avoid price dictates and intermediate trade.

dJ In medieval German law, the loan (free transfer of the use of an object) was understood as a contract of hire, i.e. it only came into existence when the object was handed over. The borrower was liable for any destruction or deterioration of the object - even (in contrast to BGB.I) if this occurred through no fault of his own.

e} The **loan** (loan of fungible items) was also regarded as a loan. Due to the ecclesiastical ban on interest, the Middle Ages only legally recognised unpaid loans between Christians. This was broken:

1. by the Darleiherprivileg of the Juden {see above),
2. through the use of "interest" instead of interest;
3. through the annuity purchase. A land or house owner was not given a sum of money in return for the obligation to pay interest, but rather an annuity was purchased from the property. For the debtor, this annuity purchase was soon even more burdensome than the interest-bearing loan, as he could not get rid of the annuity burden on his property by repaying the sum received if the annuitant did not agree (so-called "perpetual money").
4. by the "eontractus mohatrae". This legal figure comes from the arabic law. The Koran also forbids believers to take zine from each other. The Arabs then developed a legal transaction in which the seeker of money bought goods from the owner of the money at a high **price** on credit in order to sell **them** back to him immediately at **a** lower price to be paid in cash. this legal transaction was also widely used in Germany in the Middle Ages and could lead to the debtor becoming very heavily indebted. The urban economy of the Middle Ages imperatively required money transactions with interest in its original form. For a long time (and in this case to the blessing of the debtor) the Catholic law defended the interest-free nature of the loan, but finally first the interest on arrears (see above), then interest in general, if the loan was paid. was particularly dangerous.

The Roman Empire then brought about the liberalisation of interest, although restrictions on interest were introduced early on under state law.

T} Rent and lease: The rent (transfer of the use of a property in return for payment) originated as a residential rent in the medieval towns, when not every citizen was able to have their own house plot (or a house plot on municipal loan) in the space restricted by the town walls. The landlord had the right to seize the tenant's property if the tenant was in arrears with the rent payment. The tenant had rights (see there) to the property; therefore, the purchaser could not evict him from the property before the end of the rental period ("rent goes before purchase").

The **lease** (the transfer for use of a property in return for payment) is a late legal form on German soil. The transfer of the use of a piece of land otherwise took place in the form of feudal law or the various forms of peasant lending. As these were often associated with the subordination of the feudal tenant or lender to the feudal lord (landlord) and, on the other hand, fiefdoms and land loans resulted in heredity, a legal form was sought early on in which the land user was a free man in relation to the landlord, but the landlord did not run the risk of seeing his property diminished or forfeited by the rights of the land user becoming hereditary. This gave rise to the leasehold (probably first developed in Holland).

The lease was treated according to the rules of rent; if the yield was poor, a reduction in interest was often customary. The following forms were possible when leasing estates:

1. The tenant moves in with his own inventory; in this case the property was also returned without inventory, but the tenant's inventory was liable for the rent.
2. The tenant bought the inventory on the estate - in this case the landlord had to buy it back from the tenant when he took it back.
3. The tenant took over the existing inventory ("eisernen Inventar") without buying it, so he had to return it in the same quality ("eisern Vieh stirbt nie").

The teilpacht (the tenant gives a part, half or a third of the harvest to the landlord each year) was not very widespread in Germany. This legal form, which was very unfavourable for the tenant, was essentially part of Italian and French law.

Labour contracts

g} The work contract: The craftsman of the medieval town worked either by processing raw materials supplied by others, often in the house of the customer ("working on the sturgeon") or by producing goods ordered in his own workshop from raw materials supplied ("contract work") or by working for sale, whether on the order of an individual customer or for the free market, with his own raw materials. The latter form was soon the more common due to the relative prosperity of craftsmen in medieval towns. In any case, it was a contract that obliged the customer to pay for and accept the ordered goods and the craftsman to produce and deliver them. The contract for work and labour was concluded in the form of a contract of real : by 1. dedication of the material to be processed or by 2. arrha; later also by 3. vow.

The contractor bore the responsibility for the unharmed return of the fabric, but was allowed to make subsequent improvements if the delivery was inadequate. He always had to produce the work himself, but with labourers. There was no difference between art and craft in the Middle Ages. The art painter was also a craftsman; he could produce the painting ordered from him with the help of a journeyman, just as the blacksmith could produce the calf ordered from him.

In the event of a moderate payment, the buyer could change or reduce the price. The payment was either a grain price (the miller received a share of the grain, the brewer a share of the beer) or a price.

The wages were set by the fifth, sometimes also the city administrations in certain rates. Working for less than the guild wage was dishonourable; in many places, craftsmen were only allowed to work for a customer once he had paid his previous craftsmen's bills.

The contractor (craftsman) was entitled to a share of the work. If the completion of the work had become impossible by chance, the contractor received a portion of the wages corresponding to the work he had done so far (in contrast to § 64d et seq. of the German Civil Code, according to which the contractor must bear the risk of the work, with some exceptions).

h} The employment contract: Most employment relationships in the Middle Ages did not result from independent labour contracts, but from dependencies, such as the

1. Labour services of dependent farmers from the special rural land lending relationships,

2. The labour services provided by the tradesmen were based on their position in the master's house and workshop. The journeyman received housing, food and weekly wages from the master; his relationship, however, was more than a mere labour contract, but an activity bound to the status of a master in transition to his own mastery.

Freeworkers who concluded independent labour contracts were relatively rare. They often saw themselves much more as craftsmen's guilds, viewing their work from the point of view of the craftsman's contract (for example, there were guilds of sack carriers, loaders and stevedores in the harbour towns).

It was only with the growth of the non-guild population in the medieval towns that the number of workers who did not belong to a particular guild also increased. However, the labour contract was always understood in the Middle Ages as a mutual contract of loyalty and was never completely detached from the concept of paternal care. Thus, the employer always had a **certain** duty of care in the event of illness and temporary incapacity to work on the part of the worker employed by him").

--When the journeymen had to reckon with the fact that not every one of them could become a master craftsman, they saw their relationship with the master craftsmen more as a pure labour relationship, started wage struggles and created special "brotherhood shops" to support them in cases of illness and strikes.

i} The **freight contract:** The old German freight drivers were also organised like guilds (in brotherhoods or "Rotten"). They stood "on the roads of the empire" under the special protection of the empire, accepted only free men and were a highly respected group (right to bear arms and often equal status with citizens before any municipal court).

The freight driver was liable for any damage to the goods handed over to him, but only if he had breached his duty of care. If the journey could not be carried out through no fault of the freight driver, he was paid for the entire journey by the sender if he had only started the journey. He had a lien on the freight.

The freight driver was often **2fommtssionfir:** The commission agent sold the goods on commission ("sendeve") at a distance for the benefit of the principal. He originally sold on behalf of others, then in his own name, initially for a fixed wage, then for commission. He had a right of retention and lien for his claim to the commission goods.

The broker (sub-buyer) was originally a municipal official. He had to supervise the trade of foreign merchants in the city. This meant that he brokered transactions. For this he received a fee from both parties, the amount of which was determined by a tax (in the later Middle Ages he kept public accounts).

k} The Gestnde contract: Labour contracts that were not concluded between equals (customer and craftsman, merchant and freight driver), but between superiors and subordinates, were servant contracts.

The servants' rent arose in the cities - because in the countryside the various forms of peasant land lending offered plenty of opportunities to obtain services. From the city, servant hire then spread to the countryside. The servant contract was a trust agreement. The servants' contract was concluded by means of a deed, often combined with the payment of an arrha (deposit, rent thaler).
shot'^).

The thread belonged to the master's household, but remained personally free. The landlord was liable for all

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--The freight driver also had to open roads that were not closed by the **empire,** but by a sovereign, and also had to fight against robbers.

--In many towns, unemployed boys and girls were obliged to hire themselves out as threads; idleness was punishable by law. Threads who did not take up their duties, or ran away, or hired themselves out twice, were punished, as was anyone who hired out another person's thread.

If his servants caused damage, he was obliged to provide them with wages, accommodation and sufficient food. If he failed to do this, he was also penalised in many towns. The landlord had a right of restraint over the servants. The money was sometimes determined by taxes, but was always protected from other claims (for example, in bankruptcy). Withholding it was considered reprehensible.

1} The abstract promise of debt: A promise of debt that did not specify the reason for the debt was generally valid in medieval law. The debtor owed "for the sake of praise".

mJ Bold contracts:

1. The **bet was** originally a penalty for the incorrectness of an assertion. Initially, the wager was transferred to a trustee, who then handed it over to the person who had won the bet. In addition, a betting contract under the law of obligations developed at an early stage, which was established by a handshake or wine purchase. In the Middle Ages, morally impeccable bets were considered to be fair and honourable. Roman law did not change this either.

2. The **gambling contract** is originally a transfer of ownership that is conditional on the outcome of the game. We find gambling contracts as early as Germanic times (where Tacitus reports that personal freedom was sometimes even gambled away). Gambling for money ("Dobbelen") was common in the Middle Ages. The winner could sue the loser, the court recognised gambling claims, only the heir was probably not liable for gambling debts early on. Because gambling vice got out of hand, gambling debts were later declared invalid in the Middle Ages, and the winner could only take from the loser what he was carrying on his body by helping himself. Some games (on public holidays, during the fair, in the guild parlour) were forbidden. Such gambling debts could not be claimed, but the money paid for them could not be reclaimed either.)

n} **Insurance:** The oldest forms of insurance are co-operatives (brotherhoods, protection guilds), which had a common fund into which the individual members paid and from which they received benefits in the event of a claim. The brotherhoods of journeymen were exemplary in this respect; there were also numerous brotherhoods that provided funeral masses and old-age pensions. Many of the tasks that insurance companies fulfil today (life insurance, old-age insurance) were carried out by church foundations at the time.

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^) The more sensible view of Roman law, which regarded gambling debts as void in general, unfortunately did not prevail. In Germany, gambling debts were considered debts of honour.

D. The old German property law

The Middle Ages drew a sharp distinction between "Eigen" and "Erbe".

The Elgen is thereconomication of the internations that are successuccessed .

Property and goods: **Ownership** is the legal affiliation of a thing to a **person.** The order of ownership states who is legally entitled to an object. It differs from the purely factual "ownership" of an object.

1. Ownership: The basis of ownership: Ownership is the direct direct legal dominion over a property. The word property was long foreign to the medieval German language, first appearing in Cologne in 1230. Ownership of land and property has a long history in the medieval law have a slightly different content. Dae property of land was internally very limited, because too much power on the part of the landowner would have been contrary to the interests of the family, the neighbourhood, the village and the heirs (the old concept of odals still lived on here). Da8 ownership of land was more unrestricted.

Property under medieval law was (in contrast to Roman law) strongly bound to the community. It was not only purely a matter of private law, but also encroached on public law everywhere. Public rights*) (landlordship, patrimonial rights, brewing rights, hereditary offices) lay on the property of land and buildings or houses; it created duties under public law (military obligations, court duties, guard duties in the towns). The ties to the interests of the community were comparatively strong").

Property under German law was divisible'-) (sharpest difference to Roman law!1 With German law

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^) Here the difference to Roman law is particularly clear. The Roman dominium, which roughly corresponds to the German "Eigen", "Eigentum", cannot have any inherent duties and rights under public law; it belongs only to private law and fundamentally gives unlimited dominion. It is also indivisible according to the object (it does not recognise ownership of storeys or buildings separate from the land), is only divisible in terms of entitlement insofar as a co-owner has a completely independent legal share, i.e. it does not recognise cooperative ownership; it does not recognise upper and lower ownership, but only "limited rights in rem" to **other people's** property.

--} In the medieval town, for example, houses could be torn down if this was necessary for defence or to extinguish fires.

was based on the idea that as many people as possible should be able to enjoy the benefits of ownership.

1. Thenetionwasthatthe feudal lord, the overlord and the feudal farmer all had ownership rights to the feudal farm. In the Middle Ages, a distinction was made between superior property (which the lord of the manor could sublet) for protection and protection and inferior property for use and food.

2. Theirbarwasthesache: According to medieval law, there was separate ownership of the house, so the owner of the house could be a different owner from the landowner on whose land the house stood. There was also a special form of floor ownership.

3. Teilbardafterthecommunity: There was a special common property of a co-operative nature (common land), which in turn could often be linked not to the person, but to the ownership of certain farms (market cooperative).

2. The Gewere of medieval German law is a characteristically German legal concept. It can neither be equated with property nor with the possession of the BGB. Property is a **legally** recognised possession, for which the right to use the property or a right to use the property is a prerequisite. The owner of the property is protected by law. Whoever has a property in his domain may repel any attack by another person on this property with self-help.

a} If a thing in his possession is taken away from him, German law makes a distinction:

1. In the case of the forcible seizure of land, the "ideal value" remaining after the devaluation is sufficient to displace the value of the person who seized the property as "fictitious value" as soon as the forcible seizure is proven.

2. In the case of the authorisation of a right, it was not sufficient to prove that the right had previously been held. In this case, the right on which the right was based had to be proven.

b} The feud is teilbar. During the feudal relationship, the feudal tenant's direct ("bru- kende") fee takes precedence over the feudal lord's indirect fee; after termination of the feudal relationship, the feudal lord's indirect fee takes precedence over the direct fee.

c) The Gewere is essential for the transfer of property rights. It is transferred by obtaining

1. The use of land.

2. Dearresams for movable property {pledge).

3. By Erbfa11: on the death of the testator, the inheritance passes to the heir without further ado ("the dead inherit the living").

4. By means of acriculation or griculation allong-l.

On the concept of Gewere: "Gewere combines legal ownership and actual possession. Whoever has a thing is presumed to be in legal possession."

d} Acquisition of a devalued item: A person who has acquired a devalued item acquires title and ownership of it only

1. In the case of lights, if the entitled person tolerates the cancellation without objection despite knowledge of the cancellation and without coercion.

2. In the case of forfeiture, if the item was voluntarily given away by the entitled party.

Belaplel: A. gives an object to B. for safekeeping. B. sells it to C. Thus A. can only take the item from B., but not from
C. attain. "Where you have left your faith, you must seek it" or "Hand true hand".

3. However, if the property has been lost to the owner (stolen, robbed), a third party acquirer acquires no rights to it. Thus, under German law, no third party could acquire rights to stolen property.)

d} The **Anetangklage:** Whoever found a thing taken from him against his will from a third party, opened a procedure by solemnly and legally seizing the thing ("Ane- fang"), in which the owner of this thing had to name the person from whom he had received it, who in turn had to name his guarantor. Anyone who was unable to name a guarantor was considered a thief and had to pay the theft fine. In any case, however, the stolen item had to be returned. The thief and the robber could therefore not make anyone the ownerl

3. limitation of **ownership: a}** On the basis of the law of succession and family law: 1. the right to expectant heirs: In the Middle Ages, the principle that heirs could only be begotten but not made ("the property runs with the blood"), that "the heir is already sitting at the table", lived on to a greater or lesser extent in the various regions of Germany. The next heir of the owner already had a legally protected claim to the property during the owner's lifetime. Dispositions of property by the house

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(--) The estate transferred not by physical possession but only by inheritance, conveyance or judgement does not yet have effect against everyone but only between the parties. It is therefore also called "ideal ciewere".

-') Cf. in sharp contrast to this the Jews' privilege of receiving stolen goods from 1090, which originated in Talmudic law and permitted the establishment of a lien and ownership of stolen goods (see p. 98).

The deceased's will was ineffective against the heir (or heirs) if it violated their entitlement*). In some parts of Germany, the right of the heirs to reclaim from the third party acquirer property that has been removed from the inheritance by the testator has been developed from the right to expectancy.

2. This was then often weakened to the **right of petition:** dispositions of **the deceased's** father were either pending and could only become valid with the consent of the heirs; in other areas, the heirs had the right to exercise "Beieprueh" (i.e. objection) against a disposition of the testator within a year and a day.

Inheritance rights and the right of seizure were an early obstacle to the urban economy in particular. Municipal property, merchant's property, and later also municipal land were the earliest to be exempt from the right of inheritance and the right of seizure. The head of the household was then authorised to make legally valid dispositions out of genuine need, even without the consent of the heirs. In many cases, however, he had to offer the property he wanted to sell for sale to the heirs.

3. This gave rise to the **right of succession:** the heirs could take possession of the property sold from the inheritance, but had to refund the purchase price to the third-party purchaser.

4. The right of inheritance: The principle that a farm should have only one heir developed again among peasants early in the Middle Ages. ("The farmer has only one child.") In many cases, the landlord himself prevented the fragmentation of farms through the division of inheritance; the still living tradition of Germanic odal law worked in the same direction. This is how the medieval law of inheritance was formed.

Only one son inherited the farm. He could take over the management of the farm during the old farmer's lifetime, but then had to appoint him a "Altenteil" ("Leibzucht"). If the heir was not of age at the time of the inheritance, a "Setzwirt" (administrator) was appointed for him for the period of his immaturity. The heirs had to be compensated by the heir. This provision, in particular, meant that the anerbenhof was never able to get out of debt.

bJ **Restrictions** on the ownership of **land**. Soil on the basis of lage old property rights:

1. The new rights of the markers, markers and markers: Proximity rights have their roots in the old community of the village, the marquisate or in the

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--This was the remainder of the Odal idea that the inheritance of the property could not be separated from the family. - This was only interrupted by the right of forced donation of a son's share.

--Usually the oldest, in some areas the youngest; in the case of strong dependence, the one determined by the lord of the manor.

personal relationship with a landlord. In the case of neighbouring rights, the entitled party could take the place of the buyer in sales transactions by paying the purchase price.

The neighbour was known to enter into the purchase contract in place of the buyer when a neighbouring property was sold ("The neighbour across the ditch takes with neighbouring purchase"). This was a last echo of the fact that many German villages were once founded by people of the same clan (i.e. it was part of the neighbouring right and the right of inheritance).

The markloung: If march land from a march cooperative was sold to a non-march cooperative, any march cooperative could enter into the purchase contract with the "Au8marker".

The burgerretract: in the medieval town every citizen could exercise the right of first refusal when selling a bourgeois plot of land to a stranger (apparently transferring the village neighbour's lot to the town; this right was soon lost in the towns).

Right of first refusal of the superior owner: In many areas, the lord of the manor or feudal lord had a right of first refusal over his sub-owners. Pre-emption rights could also be ordered by contract ("conditional redemption").

2. Neighbouring rights: For several reasons, German law was rich in rights granted to the neighbour on the neighbour's land. On the one hand, the three-field economy with its compulsory use of land made a number of such rights necessary, as did the common cattle drive on fallow land and stubble fields.

In the Middle Ages, mutual consideration had to be taken into account at all times and window rights, building restrictions, but also toleration rights and rights became necessary. Medieval German law, for example, recognised this:

The border between the neighbours had to be maintained: they had to help each other to keep the border visible.

Page of the neighbours: they had to work together to improve and maintain the circle fences.

Group: The erection of supports on land owned by others was often ordered by contract or had to be tolerated if the owner of the land thus encumbered concealed his right to object.

Ilbefored: The neighbour was allowed to keep fruit that fell over the fence, as he also tolerated the rainwater dripping from the trees and the shade. ("He who eats the bad drop should also enjoy the good one.")

The information regulation: The neighbour was allowed to cut off overhanging branches and roots if he did not want to exercise the right of overhang.

The Hammerechlagsrecht authorised the neighbour to enter the neighbouring property to improve his house.

The lease gave the neighbour the right to erect ladders and scaffolding on the neighbouring plot of land in order to repair their own house (both characteristic of the narrow building style of the medieval town).

The schaufelachlagsrecht: The miller was allowed to enter other people's banks when cleaning the stream and deposit the mud there.

The country: Anyone who owned a low-lying plot of land that was drained by flowing water had to provide the upstream owner with a floodplain, i.e . clear the ditch so that the water did not accumulate and flood him.

Prohibition of nesting: No one was allowed to place installations on a plot of land in such a way that they caused a nuisance to others (cesspits, steps close to the property boundary, beehives close to the neighbour's house).

Fenster- and Lichtrecht: Neighbours' windows were not allowed to be blocked from light and sun by buildings; a certain distance between the houses was usually prescribed. There was also a right to ensure that the neighbour did not build on out of unacceptable curiosity (e.g. bay windows looking into the bedroom). In many cases, mutual resentment of neighbouring windows was prescribed.)

The neighbouring right of ploughing was part of village life: The neighbour was allowed to turn the plough on the neighbour's land or field.

The most common neighbouring rights were rights of way, as they had necessarily resulted from the three-field farming system with compulsory plots.

In many cases, neighbouring rights corresponded to neighbouring leaseholds:

According to the rebuilding of burnt-down houses: In the village and in many towns, neighbours were obliged to help rebuild a burnt-down neighbour themselves and with their teams.

The new neighbour had to be welcomed, was often given a gift as required and a small celebration ("neighbour dance") was organised.

4. The restrictions on the use of landed property through royal rights {Regalien}: At the time of the Merovingians and Carolingians, the king had successively seized the following rights either completely or at least largely restricted them in his favour, but some of the rights acquired in this way were later subcontracted.

1. The Porstreeht: In the Carolingian period, the king had turned the original national forests into royal forests almost everywhere; numerous margravial co-operative forests had become lordly (although numerous forest-margravial co-operatives continued to exist alongside them). In medieval Germany, the king claimed the "forest regal". In case of doubt, each forest belonged to the king, who leased the benefits from it. General use lasted a long time and led to forest damage here and there.

--The Middle Ages were, without being prudish, often delicately considerate when it came to the protection of the most private things. Rural wisdom dictates that a farmer who sees a couple "lying in the pelde" should drive his cart around so far that he can no longer tell the difference between a black and a grey horse.

2. The **hunting regime:** The king claimed the hunting regime and placed the forest under his game ban. In many cases, the sovereigns acquired the hunting rights from the king. The peasant communities, who did not want to be deprived of hunting on their own land and free hunting in the common forest, fought against this.

Early on, the knightly nobility disputed the princes' hunting rights. The regulations varied greatly. In some parts, the sovereigns alone secured the "high hunt" for deer and wild boar, while the landed nobility retained the middle hunt (red deer) and lower hunt (hares and chickens). In most cases, however, they also secured the high hunt. In the course of time, the farmer was pushed out of hunting, the urban burgher hardly ever aspired to it.

3. The Plachregal: On the public rivers used for transport, the German king claimed the Stromregal and levied taxes on fishing, while the small, non-navigable waters remained the property of the municipality or landlord.

4. The **Plußregal:** On the navigable rivers, the king claimed the collection of taxes (river tolls, bridge tolls, etc.). These were taken from him early on by the sovereigns and towns as very lucrative revenue.

5. The **mining industry:** In the early Middle Ages, the German Empire was the leading country in mining. The mining of salt and precious metals was recorded as a regal; the regal lord (originally the king, later the sovereign) granted the mining rights to the landowner or the finder. Soon the regal lords released certain mountains ("gefreite" mountains) to those wishing to mine them. If they found metals or salt worth mining, the mining rights were transferred to them against payment of a certain fee to the king ("Bergregal" in the narrower sense). This gave rise to the idea of the general "i"-freedom of the mountain": anyone who was willing and able to mine was allowed to apply for the right to mine {"muten") and had the right, unless there were special reasons against him, to be granted the right to mine.

dismantling was permitted--).

5. foreign rights to land ownership: aJ The StfldHsche Grundleihe: When towns were colonised, the town lord had issued plots of land to the settlers for their free use, on which they had built their houses. This legal form

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--The mine was operated either by individual companies or, more frequently, by co-operatives (in the case of metal mining "Gewerke", in the case of salt mining "Pfännerschaften"). The share of each trade was called {Kux" (from a Czech word meaning part, share). The king, the church and the lord of the manor were given a free share, and additional payments had to be made to the tradesmen if the operation required subsidies. Mining avoided tunnels that were too deep and favoured **open-cast** mining. In order to save costs, the medieval miner did little for weathering and support. In the IS. In the 18th century, we find that powerful merchants bought up the mining estates, completely took over the mining operations, bought out the former self-employed co-operative miners (Luther's father was one such small miner, not a miner) and reduced them to unemployed miners.

--The oldest German mining operations were located in the Harz Mountains in the Middle Ages, then in the SächßischenErzbirge and in Böhmen.

had made it easier to colonise the city because the land did not have to be purchased. This right of loan was inheritable and alienable. The borrower merely paid the town lord a small amount of interest. His status was not thereby degraded. Later, a private hereditary loan was also created, whereby other landowners lent out municipal land in return for interest. The urban hereditary loan developed into the hereditary property of the lender, and the landlord's interest claim was regarded as a real charge on the land.

b} The **peasant** land tenure: The peasant tenure goes back to the Precarium. The king and the church, as well as their great vassals, had given out their own land, the **people's** land that the king had seized, the many lands that the church had acquired (by forced donation on the deathbed and pious endowments), on revocation in return for payments.

A distinction was made between: precaria data (from the lender's own property) and precaria oblata : when the lendee himself had entrusted his former property to the lender and received it back from him on a lifelong loan (often from the church). In the F-ronhofsordnung (e. p. 79), the collection of payments from this loan relationship was transferred to the masters of the Pronhöfe. Later on, these tenants themselves took the Fronhof as a loan and no longer settled accounts with the lord of the manor, but paid him a fixed sum (see p. 80). In this way, two types of loan had developed:

Theforeight leade to Landrecht: The lendee was only obliged to make material payments from his loaned property to the lender; as soon as this relationship was hereditary, such a hereditary loan coincided with the right of inheritance under the Sachsenspiegel. This loan was therefore a legal relationship between freemen that did not entail any reduction in status.

Theuniformation : The lord of the manor lent a piece of land to a farmer. The farmer used this land to pay services, taxes or interest. When the land was alienated, when he married and when he inherited the land, the landlord received a payment. This was a legal relationship between free and unfree: it also had a tendency towards heredity. However, it was not necessarily linked to serfdom or bondage. Only a serf could receive such an unfree loan, but not every serf received it.

G. Dae atte deutBcbe T"azolttenrecbt

1. throughout the Middle Ages, marriage was concluded by contract between the parties; the communication

of marriage initially had no bearing on the legal validity of marriage. However, this also led to a large number of secret marriages ("peace marriages"); it was only after the Reformation that the Council of Trent enforced that marriage had to be concluded in church in order to be valid.

a} A verlobung was to precede marriage, but the legal provisions concerning it differed greatly in the individual countries.

b} Marriage was otherwise subject to ecclesiastical law in the Middle Ages. The church also regulated the requirements for marriage. The lack of such a requirement constituted an impediment to marriage.

c) Marriage: A distinction is made between marriage impediments and those that are not:

1. Marriage was not allowed to take place in the case of impediments to marriage. Ecclesiastical law recognised quite a few impediments to marriage (lack of age, incapacity, kinship up to the seventh degree, adoptive kinship, godparenthood, relatives by marriage, double marriage, spiritual vows, etc., as well as coercion, error, inability to perform marital duties); dispensation could be granted from several of these impediments to marriage, while others also made it possible to dissolve a marriage that had already been concluded.

2. In the Middle Ages, the only valid obstacles to marriage were a lack of parental consent, the ban on marriages during Advent and Lent, a personal vow of chastity or a vow to marry another person. Marriages contracted in spite of this were valid.

d} Legal consequences of marriage: The legal consequences of marriage are defined in the Sachsenspiegel (III 45, § 3): "The man is the father of his wife as soon as she is married to him. The wife is the husband's wife as soon as she enters his bed."

1. Power over the wife was transferred to the husband upon legal marriage. He had to maintain the wife, protect her and represent her in court; he determined her place of residence and way of life; in contrast to Germanic times, the Middle Ages recognised the husband's right to chastise his wife.

2. With the marriage, the woman acquired the right of stamesangehority and the familiesnamen dee Mannee; in chivalry also his stand ("Knight's wife has knight's right").

2 Matrimonial property law: Few things were as fragmented in the German Middle Ages as matrimonial property law. Three main formulas can be distinguished:

xy Augemelne **Glltergemeinschait:** The wife's property is united with the husband's property. We find this form in almost all German tribes, especially in Franconia, Swabia and Westphalia. It is a legal relationship of "joint ownership".

Both sets of assets form a "joint estate", from which all pre-marital debts of both spouses must also be repaid. Only assets that are either expressly designated as reserved property or over which the husband has no free disposal (fief) are not part of the joint property. The husband manages the estate alone, but requires the wife's consent to dispose of immovable property (including that brought in by him). According to certain rights, the wife can prevent her husband from disposing of property. Upon dissolution of the marriage, the entire estate passes to the surviving spouse ("the last one closes the door").

One form of general community of property is the community of property regime. According to some, mostly Frankish, laws, the husband's and wife's property was divided into movable property (free property) and immovable property (entailed property). If one spouse died, the free property became the property of the surviving spouse, while the entailed property went to the children, but remained under the usufruct of the surviving spouse.

bJ The partial joint venture took the form of a joint venture and a joint organisation.

The **Fahrnlsgemelnschaft** belongs to the nordfrance of Austrian law, has penetrated from there into the Code civil e and reached Germany with it, but probably originates from old Frankish roots. According to the community of marriage, the property brought into the marriage (and acquired free of charge during the marriage) remains the separate property of the spouses. The real estate acquired in return for payment during the marriage and the movable property brought in by both spouses, as well as all movable property acquired later, form community property, which is managed according to the principles of community of property.

A distinction is made in the case of the achievement payroll:

1. Special property of the man,
2. Special property of the woman,
3. all property acquired or earned by the spouses individually or jointly (with the exception of gratuitous gifts to one spouse). This common property was administered according to the principles of community of property. The fruits of the separate property accrued to the community property.

cJ The Verwaltungsgemelnschaft is the legal form on which the Sachsenspiegel, Magdeburgi-chen Recht and numerous town laws are based. It was the form that was particularly widespread in the Middle Ages and continues to have an effect today: The Sachsenspiegel characterises it: 'When a man takes a wife, he takes into his womb all her goods for rightful guardianship' (Ssp. I, 3t § 2).

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^} Here and there it was also found that the surviving spouse shared with the other heirs or that he or she maintained a continued community of property with the children, while under other laws the surviving spouse shared with the heirs but retained usufruct and administration until his or her death or remarriage.

Special property is expressly excluded ("husband and wife have no separate property for their lives"). However, the wife retains ownership of her property; she cannot renounce it in favour of the husband ("therefore no wife may give her husband any gift of her own or of her chattels, so that she may remove them from her rightful heirs after her death; for the husband cannot receive any other gift of a wife's property than he received with the guardianship of it"). {Sep. I, 31, § 2 ff.)

So the man had a good time at the party ("a good time at the party"). G u t") possession, administration and usufruct. A distinction was made between women's property:

1. The property (the chattels brought in by the bride). This also includes the leasers and everything that the bride's father or guardian has given to the bride in marriage).

2. Wittum was an allocation of assets given to the wife at the time of marriage in the event of widowhood. In many cases, it took the **form** of a "Widerlage": the man set aside capital (such as an estate or farm) to provide for the widow in the event of his death.

3. The morning gift was a donation (the only permissible one made by the husband immediately after the wife's marriage). The Sachsenspiegel determined how high this morning gift had to be in the knightly state (Sep. I, 20 § 1): "Now hear what every man of the knight's kind may give **his** wife as a morning gift. In the morning, when he goes to table with her, before the **meal,** without having to ask an heir, he may give her a manservant or a maidservant who is within her years (grown up), fenced and timbered and cattle going to the field."

The husband's administration and usufruct allowed him to dispose of movable property without restriction, real estate only in case of genuine need and with the wife's consent. The wife's disposal was limited in all rights, albeit to varying degrees.

The husband's debts were initially covered by his assets, but in some cases also by the use of the wife's assets, and in some cases even by the substance of the wife's property. The presumption in favour of the husband's creditors was that the movables owned by the spouses belonged to the husband. According to the Sachsenspiegel, on the dissolution of the marriage through death, the widow received the property brought in, the straight, the morning gift and the wittumi allea andere, also what had been acquired in the marriage fell to the husband's heirs.

F. The old German law of succession

Medieval inheritance law was very inconsistent. The principle that heirs could only be created, not made

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--Only in langobardic law had this dowry been regarded as compensation for the woman's right of inheritance from her father, otherwise this dowry was only a kind of advance payment: the woman's right of inheritance from her father was not extinguished, but she had to take the dowry into account.

was already broken in the Carolingian period. In general, it can be said that in medieval inheritance law, the inheritance rights passed immediately from the testator to the heir
{"The dead inherit the living").

1. Inheritance liability: The estate had to cover the debts first ("debts are the next heir"). Before the debts, the death duties to the church (spiritual equipment, burial costs, costs of funeral masses) took first place early on. In general, most German laws stipulated that the heir was only liable with the inherited assets.

In many cases, the land was exempt from liability for debts, as the owner had generally not been able to dispose of it freely during his lifetime. Here, too, the ger- manic idea of the Odal lived on, that the family should not be deprived of its property by an individual. The Sachsenspiegel emphasises this quite clearly: "Whoever takes the inheritance in this way shall pay the debts by right, as far as the inheritance grants in movable property" (Ssp. I, 6 § 2}.

The estate was also only liable for debts for which a real equivalent value had been included in the inheritance assets. The heir was therefore not liable for guarantees entered into by the deceased, nor for obligations arising from gambling, betting or unauthorised acts.

2. Ineligibility for inheritance: Ineligible for inheritance were firstly friedloses; then, in the case of fiefdoms and real estate, audities, cruppers and grankes; then, above all, the deceased, i.e. anyone who had committed an offence against the testator himself, for example by killing him ("The bloody hand takes no inheritance").

3. The **"Drelßlgste":** In most German laws, the "Dreißi'gste" (the thirtieth day after death) applied: until the end of the thirtieth day after **death,** all circumstances in the house of death remained unchanged, the widow and her children remained in the house, the heir could move in, but the household had to be continued at the expense of the inheritance and the inheritance could not yet be divided.

4. Inheritance: If there was a majority of heirs and the inheritance was undivided, there was a "joint heirship". The heirs could only dispose of the estate as a whole.

5. Inheritance: The principle often applied to the division of inheritance:

"The older one shall divide, the younger one shall gravel"; i.e. the older one determines the shares, the younger one determines the share that is to fall to him.

Advance receipts had to be offset against the inheritance. In the case of indivisible property, the transfer price was often set by one of the heirs. If the others did not want the property at this price, he had to take it himself and be credited at this value.

6. In most German medieval laws, the order of succession was the parentelen order: the children and their descendants inherited first, with living grandchildren taking the place of dead children; if there were no children, grandchildren or their descendants, the parents and their descendants (brother and sister of the testator) inherited, then the grandparents and their descendants, the great-grandparents and their descendants, and so on. If the parents were present, their siblings were not taken into account ("the child falls into the parents' lap"). - On the inheritance rights of spouses, see p. 116 117.

7. Helmlallsrechte: A reversionary right of the Königs often existed in the case of heirless estates; it then became a Regal and finally came to the sovereign.

The lord often claimed a right of reversion to the serf's estate in the case of complete serfdom.

The guilds had a right of reversion to the master's equipment and, above all, ecclesiastical bodies to the property of their brothers and nuns).

8. The will originates from the Roman Empire and was probably first used by clergy in the Middle Ages. Joint wills between husband and wife became more common from around 1300; the testator was given the inheritance in trust and had to follow the testator's instructions. The Saxon Mirror and Saxon law in general were not favourable to the testament. They sought to restrict and complicate it; it was almost always required to be drawn up before a court, council or notary.

t. Inheritance contracts: The Middle Ages knew inheritance contracts (often concluded to avoid fragmentation of land ownership) and inheritance contracts in which a unilateral or bilateral right of inheritance was established between the contracting parties or in favour of a third party'°°).

--This was often linked to a pension scheme. Old people went to a monastery, found accommodation and maintenance there, in return for which their possessions went to the monastery.

i--) Among sovereign houses and among the nobility, there were often agreements between two lords to ensure mutual succession in the event of death. Such contracts were often concluded to prevent the fiefs from reverting to the emperor or sovereign.

8. Tetl

The **reception of Roman** law

1. General development of Roman law after Justin: The law of Emperor Justinian (see p. 38), the corpus juris Justiniani had undergone a different development.

a} In the Eastern confession, it was soon no longer possible to read its Latin text. Thus they had limited themselves to translating parts of the Corpus juris into Greek or paraphrasing the content. Soon they had even contented themselves with recording only the main outlines. Finally, the excerpts had been turned into excerpts again; the Byzantines had finally only retained a few pitiful basic concepts from the rich wealth of Roman law.

b} In It "uen, however, the tradition of Roman law was never completely extinguished. It was mainly linked to the law schools of the 11th century in Rome and Ravenna.

2. The **battle** between Longobard and Roman **pitch:** Among the Germanic tribes, the Lombards were the most "born lawyers". In Pavia, they created a law school of the Renaissance. Their work became the "Liber Papiensis", a collection of Lombard law. They explained all of the individual provisions of this law by means of laws and immediately added the procedural formula. This gave rise to a new method: the legalisation of the law.

aJ The glossators of Roman law: Knowledge of Roman law continued to be cultivated at the Italian University of Bologna. Here a number of scholars adopted the method of glossing to explain each individual passage of the Corpus juris"'). The work of these men, who worked through the entire material of the corpus juris, restored man's mastery over the whole of Roman law. Not just individual parts, but its entire structure became visible.

These jurists were contemporaries of the Hohenstaufen. As much as their work was purely scientific, it was nevertheless 'vividly promoted' by the German emperors. The emperors namely

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i°') The most important of these scholars was Irnerius (besides him, four other doctors flourished: Martinus, Bulgarus, Jacobus and Hugo). Other famous glossators were Azo, Accursius and Odofredus.

made use of this Roman imperial law as a weapon against the ecclesiastical law of the Pope {thus Roman law was initially discovered not as an enemy but as an ally of Germany).

bJ The commentators {Postglossatores): When the glossators had finished their explanation of the individual passages of the Corpus juris and the compilation of the related passages - (and such a purely exegetical work must come to a conclusion) - a new school of jurists appeared:

The Commentators (mainly in Padua, Pavia and Perugia) endeavoured to extract the generally valid terms from the corpus juris. They wanted to emphasise the universally valid findings from the flood of individual cases.

What ? The commentators lived at the time of an awakening Italian national consciousness. They wanted to give Italy a uniform law to replace the ecclesiastical law and the very fragmented Lombard town laws. To this end, they defined all legal concepts from Roman law, but did not shy away from taking the Lombard statutes into account. In this way, they turned the law of the corpus juris back into a practically applicable law.

c} The breaking up of Italian statute law: In Italy, too, the principle applied that the law of the individual municipality took precedence over the common law ("land law breaks common law"). However, the commentators asserted that

aa) the Roman Empire of the Corpusjuria was universally recognised as a common law,

bb) that the city councils have been asked for their approval of the order).

Only then did the municipal laws become incomplete laws; their gaps were filled by the spirit of the common law of the corpus jurie, which was adapted to practical needs by the commentators.

dJ The commentators' "jurisprudential reasoning": When the commentators worked out the generally valid concepts from the corpus juris (concept of lease, concept of declaration of will, etc.), they gave the law of the corpus juris powers of world conquest in the purely sensual mindset of those days. Now every right and every legal system could be explained with the terms from the corpus juris.

- that was the opinion of the time. The commentators, before

'--) "The statutes of the individual counties are to be interpreted narrowly and infertile like the Mauleeel, they cannot be interpreted or interpreted, but are to be understood narrowly and strictly according to their wording." Gandihus.

Especially the three greats among them, Cinus, Bartolus and Baldus, created the science of jurisprudence.

8- The triumph of Roman law: a} European success of Roman law: Almost all European countries adopted Roman law. It triumphed not only in Italian, but also in Spania, Frankreich, invaded Ungarn and Polen. Only what the glossators had already worked on was adopted throughout. Those **parts that** the glossators had already left untreated as outdated were generally not adopted either {"quidquid non ag- noscit glossa, non agnoscit curia").

bJ The pecepHon of Roman law in Germany: The German Empire and the German people were not the only ones to succumb to the victorious intellectual power of Roman law, which had been reopened by the great Italian legal scholars.

aa) The reasons for the adoption of the law of the corpus juris lay in the favourable reception of the time, which was the basis for the subsequent adoption of the Roman law (theoretical reception):

1. The empire was called "Heiliges Römisches Reich deutßcher Nation", it was regarded as a continuation of the Roman Empire, the emperor ale Roman Kaißer. The German Kaieer also always listed the old Roman emperors as its predecessors. It was therefore logical to regard the old Roman law as the old imperial law. Emperor Otto III had already referred to 5ustinian as his predecessor. The Supreme Pontiffs (Frederick I and Frederick II) had already regarded the Corpus juris as imperial law to such an extent that they had some of their laws incorporated into it.

2. University first existed in Italy. It was common for many Germans to study law in Bologna. However, only Roman and canon law was taught in Bologna, and when universities were founded in Germany (e.g. in Prague in 1349), the Italian university regulations were transferred there and only canon law and the law of the corpus juris were taught there. German law was not taught at any university.

3. The welding of the studies of the Ciassic Atertum also focussed people's attention on the state and legal institutions of the Romans. These were often regarded as exemplary.

4. The most profound reason for the adoption of Roman law was probably the fact that the belief that law could not be made, but could only be said to be law, had already been suppressed among large sections of the population since the time of Christ. People had become accustomed to seeing the law as contained in laws. Thus a work of the richness and inner power of the corpus juris must have appeared to many as a better, more righteous law than their own existing rights. Thus it was possible that a legislative

The law was established in Germany as a work of a rather foreign spirit that had originated a thousand years ago.

bb) The recommendation of the Romic Recognization was also official and practical reasons:

1. Kaiser Maximilian saw Roman law as a way of providing the German people with a standardised law. Thus, when the Imperial Court of Justice was established by the Imperial Chamber Court Order of 1495, he determined that this court should
"judge according to the common laws of the realm, also according to honest, honourable and fair orders, statutes and customs of the princes, dominions and courts that are brought for it".

This meant that the Reich's sovereignty had to be recognised and applied only to "the common law", i.e. the Roman Catholic law. Native German rights had to be " brought for it", i.e. their validity had to be proven. But even then they did not have to be valid if they were not also recognised by the Roman-educated jurists.
appeared "honest, honourable and fair".

2. The courts of the territories and cities often followed the example of the Imperial Chamber Court.

3. The genurists had an interest in extending the scope of Roman law - because the larger their field of work, the greater the employment opportunities and income for them. In many cases, however, they also felt that they represented a better, more reasonable law.

4. The sovereigns encouraged the adoption of Roman law because it was administered by trained lawyers who were paid by the sovereigns as civil servants and were better in the hands of the sovereigns than the previous German courts; in addition, the corpus juris ale law of a tightly organised civil service state favoured state power.

5. Since the time of the German law was very great and almost unbearable, the people of those **days** would probably have adopted a worse law than the Roman one just to establish legal unity.

6. The development of handels and the administration of the community acted in favour of legal unification; but it was precisely the merchant who found such capitalist law as Roman law agreeable.

cJ What and how the world was reziplertt The entire legislative work of Emperor Justinian, the Corpus juris, was received in its entirety'").

'--} It must be noted that it was not ancient Roman law, which had a certain affinity with ancient German law because of its common origin in Indo-European law, but rather the late Roman law of the "Corpus juris" with its supranational and individualistic views, which were often quite distant from the German legal and living conditions of the time.

In the praxis, only the part of the Corpus juris that had been edited by the commentators was adopted. The commentators, however, had already added a number of Germanic elements to the Corpus juris by adopting Longobard city law provisions. In general, Roman constitutional law and Roman criminal law were not adopted.

dJ Subsidiary validity: In principle, Roman law applied on a subsidiary basis, i.e. only if there was a legal basis. This was very different in practice. Where written German law with ancient judicial usage existed, the influence of Roman law remained minimal.

Some areas were only very weakly affected by Roman law or not at all, such as almost all the lands of the Sachsenspiegel. In other areas, however, the validity of Roman law went far beyond its subsidiary validity. Because the parties who relied on a German legal norm had to prove the validity of this legal norm, almost the entire body of German law was suppressed in those regions where there was little or no written German law.

It became decisive that the legal system in Germany was only concerned with Roman law as a basis, although it very soon drew on domestic legal norms.

eJ The attempts to harmonise state legislation with **Roman** law: Numerous German state governments wanted to prevent a complete fragmentation of court practice, here and there also to save the applicable German law from being flooded by Roman law, but above all to define the boundaries of the two laws and to determine for their state what the applicable law should be. This resulted in a large number of state laws in the 16th, 17th and 18th centuries.

aa) All these national laws were influenced to a greater or lesser extent by Roman law. We know them as such:

1. the Bayriache Landrechtsreformation of 1518, renewed in 1616,
2. the Tiroler Landeaordnungen of 1526, 1532 and 1572,
3. the Conetitutio Joachimica of Brandenburg of 1527 (regulating the law of succession),
4. the land law of the Principality of Jülich from 1537,
5. the Dithmarecher Landrecht (imposed on the Dithmarschers after their subjugation by the Holstein dukes) of 1567,
6. Court order and land law of the county of Solme from 157l,
7. the Württembergische Landrecht of 1555, renewed in 1567 and 1610,
8. the Sdchsischen Constitutionen of 1572,

9. the Landrecht des Herzogtuma Preußen of 1620 (revised in 1721 by Samuel von CoccejiJ,
10. the Codex maximilianeus bavaricus civilis of 1756, written by Freiherm Wigulejus von Kreittmayr.

bb) Rarer are legal opinions in which it was attempted to repress German law, i.e. to build a dam against Roman law. This includes'''):

1. daa Osterstadische Landrecht from 1581,
2. da8 Wurster Landrecht (created shortly before its destruction by the Archbishop of Bremen by the small Frisian Free State of Wussten between the Weser and Elbe rivers) from 1610,
3. the Wendiech-Rügiani8che Landgebrauch of the LandvogteB Mattheuß Normann from 1531.

cc) The cities also began to draw up their city laws, where this was not yet the case, or to rework them under the influence of their Roman-educated legal scholars. In many cases, this resulted in a very insightful fusion of local and Roman law. We know of such urban law reformations among others:

1. the Nuremberg Reformation of 1479,
2. the Worms Reformation of 1499,
3. the Frankfurt Reformation of 1509,
4. the Freiburg city charter of 1520,
5. the revised Lübeck city charter of 1586,
6. the Hamburg city law reforms of 1600.

t) The E 'o1gen of the Dberoabzae of the r6zatscben Becbtes: Vor- that was the case with the adoption of Roman law:

1. The habit of dealing with a good system of law (as only the Sachsenspiegel possessed among German laws at the timeJ;

2. the numerous suggestions that German jurisprudence gained from studying this highly significant Roman work by Geiates,

3. a number of more practical and correct solutions to legal issues;

4. the possibility of having a common Begrid language with the legal scholars of other European countries.

The disadvantages were greater:

1. The German law of that time, despite its fragmentation and manifold backwardness, arose from the nature of our people. Roman law was a supra-national law.

'--} Individual such compilations of German law were produced, but no longer had the force of law, e.g. the collections of the Tübingen professor Sichard on Württemberg law.

Landrecht, the draft of a Märkische Landesordnung of the capable Chancellor Distelmeyer.

2. German law was known to the people and practised by the people themselves. Roman law was a law of the people, the people did not understand its rulings, became recommerced and lost confidence in the courts ("The law has a waxy nose - you can turn it wherever you want" or "The lawyers - have the law in their boxes").

3. German law, as the law of a nation of farmers and craftsmen, protected and secured labour and the proceeds of labour. Roman law, as the law of a city with a state economy, made a sharp distinction between "honourable work", which was worthy of a free Roman and for which one did not receive a wage but an honorarium, such as government service, advocacy, administration of one's own estate, and dishonourable slave labour, which was not really worthy of a free man.

4. German law was co-operative, while Roman law was individualistic and capitalistic.

5. German law still perceived law and morality as a unity - Roman law separated the law of justice from the law of morality (even if moral principles were also represented by it in the idea of "bona fides" and the like). For the praxis, the recommendation of the recommendations of our communications were for expected.

6. It did not distinguish between upper and lower owners, and regarded the peasant lower owner as a tenant who could be removed at any time.

7. It did not recognise the concept of cooperative property. This is how the Roman-educated jurists constructed the peasant village alms, either as state property or as "hereditas iacens" (inheritance without heirs), of which they regarded the state authorities as the custodians.

In the law of obligations, Roman law favoured the creditor over the debtor, but also the mortgagee of the property over the person who had to receive payment for work performed on the property. While Roman law offered more advantages than disadvantages for the sovereigns, merchants and some larger landlords, it was generally quite disadvantageous for the labouring people.

9. 7et1

German criminal law at the end of the Middle Ages

1. Regional codes of criminal law: While in the field of civil law the endeavours to unify the law made use of pandect law, in the field of criminal law and practical criminal law medieval Germany had the strength to create its own body of legislation. Here, too, there was a great deal of fragmentation and disunity, arbitrariness and disorganisation. This led early on to the enactment of numerous regional court codes. We are familiar with these:

1. the Nürnberger Halsgerichtsordnung of 1481,
2. the Bamberger Halsgerichtsordnung, written by the famous criminal judge Johann F-reiherr von Schwarzenberg and Hohenlandsberg,
3. the Brandenburgische Halßgerichtsordnunne (essentially created on the basis of the Bamberg} of 1516.

2. The C.C. C.: Freiherr von Schwarzenberg und Hohenlandsberg was commissioned by the emperor and the empire to draw up a German penal code for the entire empire.

aJ mtstehung. This code "Constitutio Criminalis Carolina" (C.C.C.) regulated the criminal process in the first instance. It was precisely the disorder and arbitrariness in the area of criminal proceedings that had prompted imperial legislation. The actual criminal law was presented in Articles 104-180 following the doctrine of judgement. In terms of its content, the peinlicalla rrichsordnung contains partly Italian and partly German law, strongly modelled on the Bamberg Code of Criminal Procedure'--).

b} **The spirit of the** Pelnhche **Halsgerlchtsordnung:** The Peinliche Halsgerichtsordnung is just, but terribly harsh. Its punishments are cruel; it recognises a number of aggravated death penalties (traitors were quartered, arsonists and coin counterfeiters burned, murderers executed, infanticides buried alive (although drowning can be used instead to "prevent despair"); Manslayers, robbers, offenders against the peace, emergency breeders, abortionists were beheaded, burglars and recidivists were hanged; capital punishments could be carried out by dragging them to the place of execution and tearing them with red-hot tongs.

'°-) Baron von Schwarzenberg and Hohenlandsberg was the actual designer of this code. He never saw its completion. He died in 1528, a very hard but very just man,
"a lover of justice and a promoter of peace, also a hater of evil, especially robbery, violence and injustice", as one contemporary judgement put it. Many years after his death, Luther still said of him: "If Mr Hana von Schwarzenberg were still alive, we would know how to trust him."

be tightened; nor does the Peinliche Halsgerichts-

. order almost only corporal punishment. As a custodial sentence, it only recognises indefinite detention; it never recognises fines, only fines to the injured party. Compared with the inhuman cruelties that had developed under the influence of the Hexenprocess, however, the Peinliche Halsgerichtsordnung is almost humane. It does not pursue the "alliance with the devil" as such. The hexe is only to be punished if it "causes harm or disadvantage to people through sorcery". The torture ("embarrassing question", martyrdom) is recognised as evidence, but it is not a punishment.

"Schwarzenberg's merit in having confined the terribly abused torture within narrow limits", "so that Christian blood would not be shed with inhuman torture and torment without guilt". Torture should only be used at the "discretion of a good, reasonable judge". Compared to the boundless arbitrariness and confusion of the criminal process at the time, the Embarrassing Neck Court Order is an indisputable step forward, however horrific some of its provisions may seem to us today. It aims to protect the innocent through orderly proceedings, but to put the criminal under leaden terror. Schwarzenberg himself defined its purpose: "For the love of justice and for the common good."

cJ **The validity of the Pel- lish Code of Judicial Procedure:** The Pel- lish Code of Judicial Procedure was only intended to apply subsidiarily and not to interfere with the "traditional, lawful and equitable customs of the individual territories ("severability clause"). Nevertheless, the Code of Punishment was applied almost exclusively throughout the empire. Reasons: On the one hand, the Code of Criminal Procedure was superior to the criminal court codes of the time due to its unity and systematic approach, and on the other hand, it met the wishes of the absolute state because it repeatedly instructed the judge to appeal to the authorities, which therefore had a strong influence on the administration of justice. granted.

d} The German Code of Criminal Procedure In academia: The Code of Criminal Procedure was treated and interpreted by the German law faculties in a similar way to the civil law of the Corpus juris. As it became customary for the courts to ask a law faculty for its opinion in all cases of doubt, science gained a strong and generally favourable influence on court practice in criminal matters'°-).

'°-) A special path was taken by the Saxon criminalists who, in contrast to the Peinliche Halsgerichtsordnung, cultivated Saxon criminal law, above all Benedict Carpzow, who boasted of having passed 50,000 death sentences in his lifetime, one of the most terrible and restricted witch hunters of the time, and also with a strong scientific influence, as well as Matthias Berlich.

3. The **suppression of** the deme: a} entstructionofthefeme : On the basis of old county courts {which were probably not originally based on a Carolingian tradition, but in their roots on a local tradition), the
"red earth" courts, which were called "free courts" {because they were judged on prices).

bJ Machterwork : In the times of legal dissolution during the interregnum in the Id. Century, these courts had extended their powers, since they existed by virtue of the empire and were courts under royal ban.

c} Organisation : The organisation of the Femgerichte emerged from the Grafschaftsgerichte. Increasingly, however, these courts became saturated with indigenous, popularly guarded supremacy. At the head of each Femstuhl was a Freigraf; this had to be a free man, whether knight or free peasant was the same. Only free men were accepted as femschöffen ("made aware"). Admission could only take place on Westphalian soil. The pemwissende swore an oath to guard and keep the secret of the distance'^).

dJ Thecourt : The court sessions in the Peme were generally open to the public and always took place during the day (not at night). As the political turmoil in Germany intensified in the 14th century, the Ferne took on the form of a summary judgement. Two knowledgeable people could judge and execute a criminal "in the act" or "at the mouth of an important person" (confession of guilt).

'°') The oath of those in the know read (according to B=rck: "Geschichte der west- fübischen Femgerichte", Bremen 1815): "I swear by holy matrimony that I will now continue to help keep and protect the holy marriage, from wife and child, from father and mother, from sister and brother, from fire and wind, from all that which the sun shines on and the rain covers, from all that which lies between heaven and earth, from the man, ao daa right can; and I will bring before this free chair, under which I am seated, all that belongs to the Emperor's secret consideration, which I know to be true, or have heard truthful men say, which goes to judgement or punishment, which is foreign, so that it may be judged, or with the will of the plaintiff be mercifully expiated; and I will not leave it for love, nor for sorrow, nor for money, nor for silver, nor for precious stones, and will strengthen this judgement and right according to all my five senses and abilities; and that I will not accept this right otherwise than for the sake of justice and fairness, and that I will now promote and honour this free chair and court more than other free chairs and free courts, and what I have thus vowed I will keep steadfastly and firmly, as God and his holy gospel help me."

At that time, the "still courts" were established, at which only the baron, 7 aldermen and the court messenger were present. The defendant was summoned; if he did not appear, he was ostracised and was to be killed by anyone in the know. Distance was thus a good legal defence against arbitrariness.

e} The regulation of the feme: As royal courts, the femerial courts claimed validity throughout the empire. Justice could also be obtained from them against arbitrary sovereigns. The Freigrafen did not hesitate to summon even powerful sovereigns (such as a Grand Master of the Teutonic Order in Prussia) before their court. Numerous princes and clergymen, including Emperor Sigismund, allowed themselves to be "made aware". The great legality of the Femschöffen, their unbending awareness of the law, the swift execution and the protection they fearlessly afforded even the most defenceless and small against the most powerful, their mysterious work and their unexpected intervention in favour of persecuted innocence gave them a great reputation in the empire for a long time"').

f} The Feme refere: Because the Ferne strongly maintained Germanic law, it was opposed by the Pope, who issued a bull against it in 1452. The sovereign princes fought against the Femgerichte because, as courts of the empire, they opposed their sovereign jurisdiction. The high costs incurred by the parties seeking justice in the courts of Westphalia, the lack of uniformity of the remote courts, as each remote court was independent of the others, but above all the opposition by the sovereigns (in 1470, for example, the Landgrave of Oettingen had an entire remote court cancelled and in some cases killed) put an end to the activity of the remote courts; they sank back to local courts'°'). With the introduction of the punishable neck court order, it lost the ground under its feet.

4. The imperial police regulations: The old empire was still legally creative through the imperial police regulations of 1530, 1548 and 1567, as well as several smaller police regulations, an imperial notarial regulation and the like.

'°-} In many cases, a selection of German humanity had come together in the families of the knowledgeable; often such families can still be recognised today by their coats of arms with distinguishing marks (femroee, femsters, etc.).

'°-) Apart from distant places, there were only a few small royal provincial courts in which the king himself was the lord of the court; such courts existed in Würzburg, Rottweil and Ingelheim, but also disappeared in the 16th century.

10. Cell.

The state heritage of the Altea Retcbe and the Frfede of Münster and Osnabrttclt

The confessional struggle that arose in Germany as a result of the Reformation and the renewed advance of the Counter-Reformation led to the dissolution of the imperial order in the previous sense. As foreign countries successfully intervened in the Germans' religious war, and at the end of the Thirty Years' War (161 1648) the crowns of France and Sweden played a decisive role in shaping the German Empire, the imperial power was further weakened and the power of the individual states was further strengthened. The constitutional order since the Peace of Münster and Osnabrück was as follows:

1. The Emperor: a) Königswahl: The provisions of the Golden Bull on the election and coronation of kings remained authoritative until the dissolution of the old empire (1806). Since the election of Emperor Charles V, the electors agreed each time with the king to be elected a special "electoral capitulation" on the rights of both parties, almost always at the expense of the Emperor[l] ").

b) The caiserlic regulations were still unlimited in theory, but in practice a distinction was made between those powers that were still completely unlimited (jura reservata illimita ta[111]), and those rights for which he required the approval of the electoral college. These latter were either jura reservata exclusiv[an']), insofar as they belonged exclusively to the emperor, and jura reservata communi[ai*]), insofar as they also belonged to the sovereign.

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l'°) In 1711, the first two colleges of the Imperial Diet decided on a "permanent electoral capitulation"; the electors only had a limited right to add further chapters, against which the cities protested.

) Jura reservata illimitata, which the emperor was only allowed to exercise with the consent of the electors, were the granting of customs rights, minting rights, stacking rights and the re-granting of fallen imperial fiefs.

"-) The iura reservata exclusiva and communia were summarised as iura reservata limitata, since the right of the emperor was limited in them.

l^) The jura reservata communia, which the emperor could exercise in competition with the sovereign, were: the granting of venia aetatiß (jurisdiction of a minor) and the legitimisation of children (legitimatio per rescriptum), the appointment of notaries, the granting of book privileges. (Instead of today's legal ban on reprinting.)

stood. The jura reservata illimitata that had remained with the emperor were greatly reduced. These were: the right to elevate the status of the ruler, the conferral of academic dignities at the universities founded by the empire, the representation of the empire to the outside world, the submission, sanction and promulgation of imperial decrees and the veto against these, the right to personal jurisdiction and the filling of positions at the Imperial Chamber Court and all Imperial Court offices, as well as the right to issue "panis letters" (instructions for the maintenance of persons by spiritual benefactors).

c) The Imperial Court of Justice had **existed** as the supreme judicial and administrative authority since **1498**, and a Privy Council had existed alongside it since 1527; the participation of the Imperial Privy Councillors in the court sessions of the Imperial Court of Justice was prohibited in 1654.

2. The Imperial Diet: The more the imperial power declined, the more the powers of the individual German states increased. At Münster and Osnabrück, with the help of France and Sweden, it was established that sovereignty no longer rested with the emperor alone, but with the emperor and the empire, i.e. that the emperor only had sovereignty in conjunction with the estates represented at the Diet. The Emperor was to be entitled to sovereignty only in co-operation with the estates represented at the Diet. The Diet was divided into three colleges:

Kurfürstenkollegium,
Fürstenrat,
Stadtecolleg.

a) The Electoral College existed on the basis of the Golden Bull. The electors were united in the Electoral Association, which had already been founded in 1338. At the Imperial Diet, they formed the first collegium, whose chairman was the Electoral Chancellor, the Archbishop of Mainz.) The electors took part in the imperial regiment, had to give their consent to the jura reservata limitata, had to be consulted on the sale of imperial property, presented a number of judges for the Imperial Chamber Court - little could happen in the empire without their consent.

b) The **Fllretenrat** consisted of the ecclesiastical and secular princes, counts and free lords who were part of the Imperial Diet. After much dispute, it was decided that those princely families who had been represented at the Diet of Augsburg in 1582 should have individual votes at the Diet that were connected with their territories.

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ii-) The College of Electors underwent several changes over the course of time: in 1623 the electoral dignity of the Winter King Frederick of the Palatinate was taken from the Upper Palatinate by the Empire and transferred to Bavaria, in 1648 a new eighth electoral dignity was created for the Rhine Palatinate, in 1692 a ninth electoral dignity was created for Hanover-Braunschweig-Lüneburg, and in **1777** the Bavarian and Palatinate electorates were merged into one, so that there were only eight electoral dignities again.

The non-elected representatives (free counts and lords) only had to cast total votes (curia votes), namely the counts and lords together four, the prelates two.

Originally, the emperor would have had the opportunity to create a powerful, perhaps overpowering party at the Diet by conferring imperial status on persons of his trust or by elevating counts and lords to the status of princes. This was made impossible by the electoral capitulation of 1653, thus eliminating one last means of tightening the unified leadership of the empire. Princes newly appointed by the emperor only became imperial rulers once the Electoral College and the Council of Princes had accepted them. At the end of the old empire, the Council of Princes consisted of 35 spiritual and 65 secular votes, 94 of which were individual votes and 6 total votes. The directorship of the Council of Princes alternated between Oster-Reich and the Archbishop of Salzburg.

c) The Städteholleglii m, recognised by imperial law as early as 1500, was only granted equal rights with the Council of Princes and Electoral College in the Peace of Westphalia. Only the imperial cities were represented in it, not the sovereign cities. It consisted of 51 imperial cities, divided into the Rhenish bank of cities with 14 members and the Swabian bank of cities with 37 members. The directorate was held by the city in which the Imperial Diet washeld, i.e. Regensburg since 1663.

dJ The competence of the Diet. The Reichstaga had jurisdiction over legislation, the declaration of war, the conclusion of peace, the setting of army strength, the register and taxation.

eJ Procedure of the flelchs4agee: The Imperial Diet originally convened at the call of the emperor. The meeting could be held in any imperial city. The resolutions of the Diet were summarised in "Imperial Decrees" at the end of the session. From 1663 onwards, the Diet remained permanently assembled in Regensburg. The imperial decree of the last previous Diet of 1654 was therefore the last. It was called the "Youngest Imperial Diet". The imperial estates no longer appeared in person at the Diet, but were represented by their envoys.

fJ Passing resolutions at the Diet: The Emperor was permanently represented at the Diet by his Principal Commissary, who was assisted by a jurist Commissary. The headmaster commissioner forwarded the emperor's proposal for a law or resolution to the electoral college and the imperial council of princes at the same time. The college that had reached agreement sent its decision (Relation) to the other. This second college made a "correlation". If both were in agreement, they passed their agreement on to the college of cities. If the latter also agreed, a "Reichsgutachten" was created. With the approval of the emperor, it became the "imperial conclusion" (Conclusum imperii) and was then included in the imperial decree. In each college, the absolute majority decided.

gJ The **division** in **matters of religion:** As soon as religious issues were up for decision, the entire Reichstag split into two groups,
"the Corpus Catholicorum" and the "Corpus Evangelicorum". Only a "friendly settlement" was possible between the two. In a sense, the opposition between the confessional camps broke out again at the old Diet.

h) Foreign countries **and the Diet:** At the old German Diet, the King of Denmark as Duke of Holstein and Lauenburg, the King of Sweden because of his possession of Western Pomerania, Bremen and Verden, the King of France as Imperial Bailiff over ten towns in Alsace and as owner of the Sundgau and Landgrave of the Upper Rhine, and the King of the Netherlands because of his possession of the Upper Rhine.
elaag represented"^).

Assessment: The great teacher of constitutional law Samuel von Pufendorf rightly described the old empire as a being "monstrosimilis" (similar to a monster). With the complete weakening of the emperor's executive power, the lack of unity and the slow progress of the Imperial Diet, the empire was almost incapable of managing itself due to the complexity of its constitutional law alone. The centre of gravity shifted to the individual states.

11. Tell

The law of the Enlightenment

By Enlightenment, we mean the intellectual movement that began at the start of the 18th century and aimed to regulate people's lives solely according to the principles of reason.

Grtlnde: The Thirty Years' War and the numerous religious wars had convinced people that ecclesiastical fanaticism and zeal were disastrous. Astronomy had proven that the earth revolved around the sun and was only one of billions of stars. This meant that the church's doctrine of heaven, the ascension, hell etc. had become unbelievable. Science flourished, natural science opened up the interrelationships of the natural world. Newton discovered the law of gravity, mechanics flourished, belief in magic and miracles was lost. Biblical criticism began to reveal the Bible as a man-made book like other books. It was a general liberation of the spirits. People turned to a new naturalness.

1. Natural law: The natural law school among the Christians rejected the appeal **to** the obligation to the previous tradition. Law should be reasonable:

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l'-) Switzerland and the Netherlands had left the old empire in 1648, the King of Poland should have been **represented** at **the** Diet as the owner of the Silesian duchies of Auschwitz and Zator, but simply ignored the forgotten imperial rights to these possessions.

a) In the civilrecht one became critical of the Corpus juris and freed oneself from it where it seemed to contradict reason and the practical requirements of the time.

b) In the Strafrecht the obligation of the Mosaic law "an eye for an eye, a tooth for a tooth" was denied and it was concluded that criminal law had to serve the practical needs of society alone. After a fierce battle against the clergy, the belief in the punishability of witchcraft and finally in the possibility of a covenant with the devil was overcome. Attacks against the polter as evidence increased and led to its restriction.

2. The modifications: Codifications were now ventured more frequently. In many cases, the states decided to create completely new legal systems that were to correspond to common sense and practical use. Most of these codifications therefore excluded the subsidiary application of the common law (in contrast to the legal reformations, see above). As such codifications we know

I. **The** Prussian **General** Land Law:

a) Origin: In 1746, Priedrich the Great had obtained the unlimited privilegium de non appellando (meaning that no appeal could be made to the Imperial Chamber Court against a Prussian court). He therefore commissioned the legal scholar Samuel von Cocceji (1679-1755) in 17d6 "to draw up a German General Land Law based solely on reason and the constitution of the land". Cocceji produced the two parts of his project of the "Corpus juris Friedericiani" by 1751. However, only the provisions on marriage and guardianship were put into effect in individual provinces. Due to the Seven Years' War, the legislative work came to a standstill; in 1780, the Grand Chancellor von Carmer was commissioned by the King to create a "General Prussian Code". Together with the Oberamtsregierungsrat Svarez, he created a "General Court Code for the Prussian States" and published the draft of a "General Code of Law for the Prussian States" by 1788. This code came into force in 1792, but was then repealed again due to all kinds of contradictions. After a final revision {by Svarez j, it came into force on 1 June 1794 as the "General Land Law for the Prussian States".) The first part deals with the position of the legal subject in relation to the property, the second part with the position of the legal subjects in relation to each other.

b) The Prussian General Land Law: The work is not clearly structured, but endeavours to give a decision for each individual case as far as possible. The excellent interpretation by the Prussian courts has in fact turned the Prussian General Land Law, which contains a great deal of legal understanding and practical wisdom, into a very successful law.

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1) The General Land Law consists of an introduction in two parts. The first part has 23 titles, the second part has 20 titles. The titles are divided into sections, the sections into paragraphs.

cJ Validity of **the** Prussian General Land **Law:** The Prussian General Land Law was subsidiary. It was merely intended to "replace Roman, common Saxon law and other foreign sub-Saxon laws". The provincial statutes and provincial laws, on the other hand, remained in force. However, as early as 1794, the first three titles of the second part of the Prussian General Land Law were repealed, as they were the
"just the opposite of a clear and indisputably received Roman or other foreign law" were temporarily suspended (in the Kurmark, Neumark, in the districts of Cottbus and Luckenwalde as well as in the districts of Dramburg and Schievelbein they remained suspended, while their suspension was otherwise cancelled).

d} The Allgemeines Landrecht **and the Blchter:** In accordance with **the** principle of the absolute state that civil servants and judges were strictly bound by the law, the Allgemeines Landrecht (until 1798) even had the principle that in cases of doubt the judge had to consult a law commission. This commission was also later to interpret and supplement the law where gaps were found. (Its decisions were collected as an "appendix" and appended to the General Land Law).

II. Frederick the Great abolished torture in the area of justice. A **Prussian** Criminal Code was published on 11 December 1805.

HI. Austria: Maria Theresa had already endeavoured to compile a uniform code of law for her states, and in 1766 a draft Codex Theresianus was produced. This was reworked and published in 1786 under Joseph **II** as the "Josephinian Code"; again revised several times, it was published in 1786.
1 June 1811 as the "General Civil Code" in all Austrian states (except Hungary and Transylvania). For criminal law in Austria, the "Constitutio Criminalis Theresiana". This was replaced by Joseph II's penal code in **1787.**

2. The spirit of **Enlightenment law:** The Enlightenment was based on general principles. National differences were only taken into account in law where they seemed to have a "reasonable basis".

a) Administration of justice: The administration of justice was taken over entirely by the **state**, corporate jurisdiction, such as that of the guilds, was pushed back, and jurisdiction in the village was administered by the state.

Kablnetts-Justlz. In the 17th and 18th centuries, the administration of justice suffered greatly from the fact that princes interfered in the course of legal proceedings by making decisions. The resulting legal uncertainty and intrigue led to the fact that in the

Bechtsstaat: the princes of enlightened absolutism (Frederick the Great, Joseph II) refrained from any intervention in the administration of justice.

In many cases, **the legislature and the administration** were still united, and in the lower instance they were almost always in the same hands, although the times were pushing for a separation of these two powers.

The **patronage jurisdiction** in the countryside was exercised by the landowners. It encompassed civil disputes between their landowners, minor criminal cases and voluntary jurisdiction. It was always associated with the exercise of police jurisdiction.

bJ **In civil law,** the Enlightenment period was based on the assumption that each class should be kept within its own boundaries as far as possible and its strengths utilised for the benefit of the state (the nobility were reserved the right to own manors, for which their sons had to become officers; the burghers were exempt from military service, for which they were responsible for the development of trade, but also paid higher taxes). The few yeoman farmers had to allow their sons to become sub-officers, the mass of serf farmers were bound to the estate and were conscripted for military service). One class was carefully prevented from encroaching on the rights of another. Economically, the Enlightenment promoted trade and commerce, often at the expense of agriculture.

It was based on the idea of freedom of contract and first considered the interests of the individual within the framework of the given order. (For example, it regarded marriage as a pure contract, which was therefore declared to be dissolvable even in the event of mutual dislike}.

c) In criminal law, the idea of deterrence was increasingly abandoned. Punishment was seen primarily as a means of protecting the state and fellow human beings from the offender. Under the influence of the books of the Italian Beccaria, the use of the death penalty was restricted (temporarily abolished altogether in Austria by Joseph II). The more severe forms of execution disappeared, and only corporal punishment remained.

Long-term prison sentences, on the other hand, were now used, and penitentiaries, spinning, rasping and workhouses appeared. In the face of the excessive cruelty of the previous era, the noble belief that criminals could be punished occasionally led to excessive leniency.

3. The trial procedure: The trial procedure of the Enlightenment period still bore the strong features of the previous legal system.

The civil procedure: With the reception of Roman law, the procedural law of northern Italy was victorious in Germany, although a number of German procedural principles remained.

The German separation between judge and judgement finder disappeared. The jurist judge simultaneously presided over the proceedings and passed judgement. The parties were eliminated as far as possible, as they did not master the technique of the trial.

Their advocates, academically trained legal experts, acted on their behalf.

Two forms of process existed side by side in Germany.

a) the proceedings before the Reichskammergerlcht[1]) were based on:

1. The "articulation" of the programme: The parties had to present their advance in individual articles, which had to be clearly separated from each other. The opponent replied article by article. In general, the result was not greater clarity, but a slowing down of the proceedings.

2. The proceedings were very difficult. There were virtually no oral hearings.

3. Operation was not considered.

4. A formell everiory applied, i.e. a **whole** number of rules of evidence were established. The oath was the most important form of evidence. A distinction was made between the "proclaimed" and the "retracted" oath, as well as the judicial oath.

b} The Saxon **trial:** In the Electorate of Saxony, under the influence of Benedikt Carpzow in particular, a trial procedure had developed on the basis of a number of Saxon court regulations ("old court regulations" of 1622, constitutiones Augusti I of 1572) which differed considerably from the Imperial Chamber Court. The Saxon process knew

1. The proceedings were divided into two parts. The first section ended with the "interlocutory evidence", which set out the facts on which evidence was to be taken and the distribution of the burden of proof between the parties. In the second part, the evidence was then adduced and the final judgement rendered.

2. The "eventual maxime" resulted from this. The parties had to present everything they had to present in the trial in the first section. The court would no longer hear anything they brought up later.

3. The courting maxime: The court only took into account what the parties presented (and what was not in the court's favour); it did not take evidence on its own and did not go beyond the requests of the parties.

cJ The common civil procedure: On the basis of a long-term approximation of the Reichskammergericht procedure and the

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[1]) Organised by the Imperial Chamber Court Regulations of 1495, 1521, 15d8, 1555, summarised in the "Concept of the Renewed and **Improved** Imperial Chamber Court Regulations" of 1603, supplemented in 1648,{1654 and by the Visitationsabschied of 1713.

The seat of the Imperial Chamber Court was Frankfurt am Main in 1495, it was transferred to Worms in 1496, Regensburg in 1503, Nuremberg in 1521, Eßlingen in 1524 and Speyer in 1527. When the **French** destroyed Speyer in **1689,** the Imperial Chamber Court **was transferred** to Wetzlar, where it remained until 1806.

Saxon process gave rise to the joint centralised process. It adopted from the Imperial Chamber Court proceedings the prevalence of the formal theory of evidence, the written form and secrecy of the proceedings, and from the Saxon trial the maxim of negotiation and the maxim of contingency.

dJ National regulations: The common civil procedure was not valid in all German states and was in part interrupted by state law regulations.

1. In Prussia, the Preußische Allgementsordnune Gerichs of 1793 were in force. This brought a sharp departure from the maxim of negotiation and imposed on the judge the obligation to investigate the material truth without regard to the arguments of the parties.

2. The Code de procedure civile of Napoleon I, which was valid in the territories under French rule in 1806, was, remarkably, more German-legal than the **common** civil procedure in force in Germany at the time (because **it had adopted** many **principles of German law** from northern French **law}, it again recognised** the "orality and openness of the proceedings").

The **criminal process:** The Peinliche Halsgerichsordnung Charles V (C.C.C.) was primarily a code of criminal procedure. The proceedings were written and secret. Only at the end of the proceedings was a "final judgement day" held in which the verdict was announced. The Peinliche Halsge- richtsordnung recognised both the case in which a plaintiff faced the defendant and the case in which the defendant faced the court alone. The latter form predominated. The task of the court in the criminal proceedings of the Peinliche Halsge- richtsordnung was to investigate the material facts. No one was to be sentenced who had not in fact been convicted of his crime. The evidence thus became the main means of proof. In order to enforce it, folter was largely authorised. Witness evidence remained less important than confession and was often restricted (requirement of two or even three traditional witnesses).

The criminal process of the Peinliche Halsgerichtsordnung changed considerably during the Inquisition. The inquisition process,
i.e. the investigation of the crime solely by the court without an accuser, prevailed, the "final day of justice" was abolished, secret and written proceedings were made universal, and torture was abolished.

"-) From 1850 until its disappearance in 1866, the Kingdom of Hanover was governed by the Hanoverian Code of Procedure, which was influenced by the Code de procédure and the common civil procedure.

12. Telt

The reception of the traaxästscbea Becbtes

1. Foundations: In France, before the Great Revolution, the droit coutumier, a customary law on a Germanic basis, applied in northern France, while in southern France the droit ecrit, Roman law, which was further developed in Francei").
The Great French Revolution had made France's legal system, which had already been very confused for a long time, completely confusing.

2. Napoleon's legislation: Napoleon Bonaparte commissioned four men (Tronchet, Portalis, Bigot de Préameneu and Male- ville) to draft a civil code. This was introduced on 20 March 1804 as the "Code clvll des Francais".)

The work consists of a short preface and three books. The authors mainly chose the customary law of Paris and other northern French customary laws as a basis, so that the work has a conspicuous amount of German legal features. It is concise, clear, simple and popular in its formulation, although its critics accuse it of being somewhat superficial and lacking in depth. From an ideological point of view, it is very liberal (e.g. it advocates the complete free division of land ownership).

Napoleon I, who was a very great legislator, supplemented his work, the "Code civile", with the following codifications:

1806: Code de procédure civile (civil procedure),
1807: Code de commerce (commercial law),
1808: Code d'instruction criminelle (criminal
procedure), 1810: Code pénal {criminal law).

3. Reception in Germany: In Germany, this French law applied (with the elimination of all other rights) in the territories ceded to France in the Peace of Lunéville in 1801.

"-) We know a French school of Roman law, represented by Jakobus Cujacius (1522-1590, main work: Observationes et emendationes) ; Hugo Donellus (1527-1591) Commen- tarii jurie civilis). Dionysius Gothofredus {1549-1622, editor of the Corp. jur. civ., finally his son Jakobus Gothofredus (1587-1652, commentary on the Codex Theodaosianus.

^-) In 1807 it was called the "Code Napoléon", then in 1814 after the reinstatement of the Bourbons it was again called the "Code civil", under Napoleon III again the "Code Napoléon", and since his fall in 1871 the Code civile again.

left bank of the Rhine: French law was promulgated in the Kingdom of Westphalia and in Danzig in 1807.

In 1809 Baden created a translation of the "Code civil" together with official additions as "Badisches Landrecht nebst Handelsgesetzen".

After 1815, the scope of the French law was pushed back again; however, it applied to the parts of the Prussian Rhine Province on the left bank of the Rhine and in the areas on the right bank of the Rhine that had formed the Grand Duchy of Berg (Lower Rhine) during Napoleon's time, as well as in the Palatinate, Rheinhessen and Birkenfeld, while all other rights were removed. In 1871, Alsace-Lorraine, another area with Napoleonic legislation, became part of Germany.

The general influence of this French law on the other German laws was not very significant, and in any case considerably less than that of the Corpus juris, not least because, for all their practical formulation, the Napoleonic legal works lacked the final deep legal thought that Justinian's work exhibited.

13. Part

German constitutional law
from the decline of the old empire to 1932

1. The end of the Holy Roman Empire of the German Nation: The peace dictate of Lunéville had completely shaken the organisation of the old empire by ceding the entire left bank of the Rhine.

Reichsdeputationshauptschluss: The greatest changes were made within the German Empire by the Reichsdeputationshauptschluss under French influence to compensate those imperial states that had owned property on the left bank of the Rhine. The Reichsdeputationshauptschluß of 25 February 1803 determined the confiscation of 45 Preien Reichsstädten. Only Hamburg, Lübeck, Bremen, Frankfurt a. Main, Nuremberg and Augsburg remained imperial cities. This meant that the city bank of the old Imperial Diet was as good as gone.) All ecclesiastical foundations were also confiscated. Only the Electoral Chancellor of Mainz, for whom Regensburg was created as an ecclesiastical principality, and the heads of the Teutonic Order and the Order of St John remained. On the other hand, four new electors were created: the Duke of Württemberg, the Margrave of Baden, the Grand Duke of Tuscany, to whom Salzburg was assigned as an electorate.

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[1] Augsburg came to Bavaria in 1805, Nuremberg in 1806, Frankfurt a. M. was annexed by Prussia in 1866.

and the Landgrave of Hesse-Kassel became Electors. They no longer **exercised** this dignity; only the Elector of **Hesse-Kassel** held this title until the **annexation of his** state by Prussia in 1866*°).

In the War of the Third Coalition (1805), Bavaria, Württemberg, **Hesse** and Baden fought on France's side **against** Austria. Bavaria and Württemberg were given the **royal crown** by Napoleon's grace.

b) Confederation of the Rhine: The Act of the Confederation of the Rhine (12 June 1806) united 16 imperial states (Württemberg, Bavaria, Baden and others) to form the Confederation of the Rhine under Napoleon's patronage. On 1 August 1806, the princes of the Confederation of the Rhine seceded from the German Empire and Napoleon I declared that he no longer recognised a German Empire.

Francis II (he had already assumed the title of Emperor of Austria in 1804) laid down the imperial crown on 6 August 1806. The old Holy Roman Empire of the German Nation had come to an end. From 1806 to 1815 there was no constitutional unification.

The Confederation of the Rhine usurped the territories of numerous princes who had until then been direct subjects of the Empire, as well as the imperial counts and knights. The organisation provided for in the Act of the Confederation of the Rhine (a college of kings and a college of princes) did not come into force. After the defeat of Prussia in 180Qt07, Napoleon created the Kingdom of Westphalia, the Grand Duchy of Berg (Lower Rhine), the Grand Duchy of Würzburg and turned Danzig into a republic. The Confederation of the Rhine finally encompassed all German states except Austria and Prussia (also excluding Rügen, Swedish Pomerania and Holstein). It disintegrated as a result of the Wars of Liberation.

2. The invention of the German Confederation: The actual supporters of the German uprising against Napoleon (Ernst Moritz Arndt, Freiherr vom Stein, Jahn) had striven for a unified, powerful Germany, At the Wiener Kongreß, however, the French plenipotentiary Talleyrand the reactionary Austrian State Chancellor Fürst Metternich succeeded in thwarting the creation of a unified German Empire by skilfully exploiting the opposition between Austria and Prussia and the selfishness of the German princes.

1. The commission of the Deutschen Bundes: Thus only the "German Confederation" came into being (through the Act of Confederation of 8 June 1815).

'--) In detail, the following princes received compensation:

1st Grand Duke of Tuscany: Salzburg and Berchtesgaden. 2nd Duke of Modena: Breisgau (in return for which Austria receives the Styles of Trento and Brixen). 3rd Bavaria: Bishoprics of Würzburg, Bamberg, Freising, Augsburg, abbeys and imperial cities in Franconia and eastern Swabia.

4 Baden receives the Palatinate on the right bank of the Rhine (Heidelberg, Mannheim) and the bishoprics of Strasbourg, Speier, Basel and Constance. 5th Württemberg: several monasteries and imperial cities, especially Reutlingen, Eßlingen, Heilbronn. 6. Prussia: the bishoprics of Münster, Paderborn, Hildesheim, Mainz Thuringia {Eichsfeld and Erfurt), several abbeys, especially Quedlinburg, and the imperial cities of Mühlhausen, Nordhausen, Goslar. 7. Oldenburg: the bishopric of Lübeck.

8. Hanover: the bishopric of Osnabrück.

38 German sovereign princes and free cities joined together "to form a permanent alliance, which shall be called the 'German Confederation'" and whose task "is the preservation of the external and internal security of Germany and the independence and inviolability of the individual German states"'- 1.

2. The formation of the Deutschen Bundes: The German Confederation was a confederation of states; born out of the endeavour to maintain the sovereignty of the individual states as far as possible and to accommodate the unity aspirations of the German people as little as possible, it had no central authority above the members of the Confederation. The Federal Assembly (usually called the Bundestag) was the federal government. It did not have direct legislative power over the federal territory. The federal resolutions merely obliged the individual governments on the basis of the German federal acts (and in the event of danger of federal execution) to implement the content of these federal resolutions. in their countries.

The organization of the Bundeeversame was the Bundea4ag in Frankfurtamain, a permanent congress of envoys.

One distinguished:

The First Council^-), which dealt with day-to-day business, and the P1enum'°^), which only dealt with the drafting or amendment of federal laws, the admission of new members, declarations of war and peace treaties.

In the event of a federal war, ten army corps were to be set up, three each from Austria and Prussia, one from Bavaria and three from the other states. Luxembourg, Landau, Ulm and Rastatt were federal fortresses.

3. The attempts at reforming the German Confederation: Metter had diligently prevented this weak German Confederation 'was made into a representation of a truly unified Germany by being more sharply summarised. The Revo-

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'--) Austria and Prussia belonged to the German Confederation only with those parts that had once belonged to the old German Empire, i.e. Austria not with Hungary, Croatia and Galicia, Prussia not with West Prussia, East Prussia and Posen. The Netherlands belonged to the German Confederation with Luxembourg and, since 1839, also with Limburg, Denmark with Holstein and Lauenburg. Saxony-Gotha in 1825 and Anhalt-Köthen in 1847, **as well as** Hohenzollern-Sigmaringen and Hohenzollern-Hechingen (which were united with Prussia in 1849) were dropped. This reduced the number of members to 35. The Vienna Final Act of 15 May 1820 supplemented the German Federal Act in line with Metternich's reactionary aspirations.

^-) An absolute majority was required in the Engeren Rat, a two-thirds majority in the Plenum. In the event of a tied vote in the Enlarged Council, the vote of Austria was decisive. In detail, the procedure was quite difficult and entirely calculated to prevent a restriction of the sovereignty of the individual states.

'--) In the plenary session, Austria, Prussia, Saxony, Bavaria, Württemberg and Hanover each had four votes, Baden, Electoral Hesse, the Grand Duchy of **Hesse,** Luxembourg and Holstein each had three votes, Mecklenburg-Schwerin, Nassau and Brunswick each had two votes and the remaining states each had one vote.

lution of 1848 (which expelled Metternich in Vienna) took the rebuilding of the German constitution into its **own hands.** A "Vorparlament", a free association of German politicians, met in Frankfurt am Main to lay the foundations for a new state unity. Under pressure from the outraged masses, the Bundestag was forced to call a general election for German national representation on 30 March 1848.

4. The constitutional plan of 1848: The men elected in this election came together in the Paulskirche in Frankfurt as the "German National Convention". They passed a law on provisional centralised power. They elected Archduke Johann of Austria as Reichsverweser. On 12 July 1848, the Bundestag transferred its constitutional rights and duties to the Reichsverweser. After far too long negotiations, the German Constituent National Assembly delivered a "Constitution of the German Reich" (27 March 1849).

On 29 March 1849, the National Assembly elected King Frederick William IV of Prussia as German Emperor. He refused the crown (which, incidentally, was offered to him in bad taste by the Jew Simson)[1] "). The Prussian Ab-

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[1] -) This constitution provided for a federal state headed by a hereditary emperor with responsible imperial ministries. The Imperial Diet was to consist of two houses, a House of States, half of whose members were to be delegated by the governments and half by the individual state parliaments, and a House of the People, whose members were to be drawn from equal secret, direct and general elections. The Constitution did not receive the approval of the Reichsverweser and was promulgated by the Presidium of the National Assembly without the consent of the Reichsverweser.

) Frederick William IV. himself was completely under the influence of the "conservative idea". This does not recognise the right of the people to national unity, but derives authority solely from the appointment by God. Frederick William IV justified his rejection of the imperial crown offered to him with the following words (to Bunsen):

"First of all, the crown is not a crown. The crown that a Hohenzollern might take, if circumstances could make it possible, is not one that is made by an assembly, even if appointed with princely consent, but shot into the revolutionary seed, ... but one that bears the stamp of God, that makes the one on whom it is placed, according to the sacred olung, 'by the grace of God', because and as he has made more than thirty-four princes kings of the Germans by the grace of God and has always waved the last one of the old line. The crown worn by the Ottonians, the Hohenstauffen and the Habsburgs can of course be worn by a Hohenzollern; it honours him effusively with a thousand years of glory. But the one you - unfortunately - mean members were recalled from the National Assembly. The rest of the assembly (rump parliament) went to Stuttgart and was dissolved there. An uprising in Baden, which sought to enforce a united Germany on a republican basis, was suppressed.

5. The **"reorganisation" of the German Confederation:** In May 18d9, Prussia, Hanover and Saxony concluded a Three Kings' Alliance with the aim of establishing a German Empire without Austria. Most of the central German states joined. Hanover and Saxony, however, soon broke away from this alliance at the instigation of Viennese politics. An Imperial Diet convened in Erfurt had already adopted the draft constitution of such a small German empire under Prussian leadership - when Prussia was forced by combined pressure from Austria and Russia to abandon these aspirations and recognise the Bundestag anew (Treaty of Olmütz 1850). The German Confederation was re-established in its old form.

There were two tendencies among the people: the "Greater Germany", which wanted a unified Germany including the German parts of the Habsburg monarchy, but was unable to come up with a constitutionally viable solution, and the "Catholic Germany", which sought a federal state under Prussian leadership and was prepared to renounce Austria.

14. Tell.

The North German Confederation and Bismarck's Empire

1. The schleswlg-hols4elulecha Prage. dle Krlege von 1848/4fl und **18fl4: a)** Preamble: The Duchies of Schleswig and Holstein had been united with Denmark in 1460 by personal union in the sense that they were to retain their privileges and remain "eternally undivided". Christian VIII of Denmark had only one childless son, the later King Frederick VII. In Schleswig-Holstein, the "Salic Law" applied, which excluded the female line; in Denmark, the female line was entitled to inherit. With the death of Frederick VII, the Sonderburg-Glücksburg line (the female line) would have had to come to the throne in Denmark, while in this case the female line would have been entitled to inherit in Schleswig- Holstein.

The revolution of 1848, the silliest, stupidest, worst, though thank God not the most evil of **this** century, is being unabashedly honoured with the smell of mud. Such an imaginary crown, baked from dirt and letters, should a legitimate king by the grace of God, and now even the King of Prussia, have it given to him, who has the blessing to wear, if not the oldest, at least the noblest crown, which has not been stolen from anyone? I tell you plainly: if the thousand-year-old crown of the German nation, which has rested for forty-two years, is to be bestowed once again, it is I and those like me who will bestow it; and woe to him who arrogates to himself what is not his due."

Holstein was claimed by the Duke of Augustenburg. Behind this was in reality the unresolved question of nationality in Schleswig, where Danish and German cultural awareness had been a constant since the beginning of the 19th century had come into sharper contrast with each other.

In order to prevent a separation of the duchies, Christian VIII promulgated the "Oflenen Letter" of 8 July 1846, which stipulated that Schleswig and Lauenburg were to form an inseparable kingdom with Denmark and be inherited according to Danish law, while for Holstein the hereditary right of the Augustenburgs was recognised.

b) The Schleswig-Holsteinischelesting of 1848 A growing popular movement in the two duchies turned against this division. There was an uprising and a provisional government was set up in 1848, with troops from the German Confederation and numerous volunteers coming to the aid of the Schleswig-Holsteiners. Only when the federal troops had to be withdrawn (under pressure from Russia) was the Schleswig-Holstein army annihilated by the Danes (at Idstedt). In the London Protocol of 1852, Prince Christian of Sonderburg-Glücksburg was recognised as heir to the Danish monarchy; the next heir to the throne from the line of the Dukes of Augustenburg, Duke Christian, recognised the London Protocol, while his son Duke Friedrich did not.

c} The Crisk of 1864: In 1863, King Frederick VII died and Prince Christian of Sonderburg-Glücksburg ascended the Danish throne as Christian IX; he was strongly influenced by the radical nationalist and liberal movements in Copenhagen, who wanted to push Denmark's southern border as far as the Eider ("Eider Danes"). The son of the Duke of Augustenburg now asserted his rights, declared himself Duke Frederick VIII of Schleswig-Holstein and asked the German Confederation for recognition and support. The German Confederation recognised him and decided to execute the Confederation against Denmark. Under the influence of the Eider Danes, Christian IX proclaimed a general Danish constitution which provided for the incorporation of Schleswig into Denmark. Prussian and Austrian troops then invaded Schleswig-Holstein and defeated the Danes at Düppel. In the Peace of Vienna, Christian IX ceded Schleswig-Holstein and Lauenburg to Prussia and Austria for joint disposal.

d} The Streit um Schleswig-Holstein 1866: The condominium of Prussia and Austria over Schleswig-Holstein quickly became untenable. Bismarck was determined to prevent the creation of a new central German state and refused to recognise the Duke of Schleswig-Holstein. In the Treaty of Gastein (1865), Prussia took over the administration of Schleswig, Austria the administration of Holstein, and Lauenburg was ceded to the King of Prussia in return for 2.5 million thalers (in personal union until 1876).

The Austrian administration (Field Marshal Lieutenant von Gablenz) diligently pursued the installation of the duke in Schleswig-Holstein, regardless of Prussian protests. Prussia then resumed its plans to reform the German Confederation and submitted (9 April 1866) a motion to the Bundestag to reform the Confederation with the involvement of a national assembly to be elected by the people as a whole. Austria responded by appealing to the Bundestag to have the Schleswig-Holstein question decided by it, and the states of Holstein convened. Prussia then declared a the Treaty of Gastein for break and moved into Holstein.

Austria then requested the mobilisation of all non-Prussian army corps. The Bundestag accepted this request (14 July 1866): Prussia then declared its withdrawal from the German Confederation.

Austria and its allies were defeated (Battle of Königgrätz, occupation of Hanover, Kurhessen and Frankfurt a. M.). In the Preliminary Peace of Nikolsburg (26 July 1866) and the Peace of Prague (23 August 1866), Austria gave its consent to the reorganisation of Germany and renounced its rights to the principalities of Schleswig-Holstein'--). The German Confederation was dissolved. Hanover, Electoral Hesse, Hesse-Nassau and the Free Imperial City of Frankfurt am Main were annexed by Prussia' -).

2. The North German Confederation: a} The formation of the North German Confederation: Immediately after the end of the fratricidal war in 1866, **alliances** were concluded between Prussia and most of the North German states (August alliances), which stipulated an alliance for protection and defence for one year and in which it was stipulated that a North German Confederation with one {according to the Imperial Election Law of 12 April 1849} elected Reichstag was to be created. On
The constituent Reichstag of the North German **Confederation** was elected on 12 February 1867, and on 16 April 1867 the draft federal constitution created by the government (North German Chancellor Otto von Bismarck) was adopted by the Reichstag and on the same day by the plenipotentiary representatives of the allied governments.

As the deputies of this constituent Reichstag were elected in the electoral laws of most states only to discuss, not to adopt a federal constitution, the draft constitution was still submitted to the people's representatives in all states and adopted by them in the form valid for constitutional amendments.

The constitution of the North German Confederation came into force on 1 July 1867.

bJ The beginning of the North German Confederation: The southern border of the North German Confederation was the River Main. It did not include Austria (together with Liechtenstein), Bavaria, Württemberg, Baden and southern Hesse, Luxembourg and Limburg.

' -) With regard to the North Schleswig districts, which were predominantly populated by Danes, § 5 of the Peace of Prague stipulated that they were to decide on their affiliation by free vote and, if this was to be in favour of Denmark, were to be ceded to Denmark. It was an agreement only between Prussia and Austria, from which Denmark was not to derive any direct rights. In 1878, Austria renounced this reservation - but it would have been right to hold such a vote at that time and to cede those parts that did not want to be German.

' -) In the Treaty of London (of 11 May 1867), the King of the Netherlands recognised the dissolution of the German Confederation for Luxembourg and Limburg, but did not accede to the further reorganisation of the German states for these countries either. No special peace was concluded with the Principality of Liechtenstein, which was bound to Austria by the Accession Treaty of 1862.

However, Article 79 of the North German Federal Constitution already provided for the entry of Bavaria, Wiirttemberg, Baden and southern Hesse into the Confederation by way of simple federal legislation.

A customs union treaty had been concluded with these states once {8 July 1867) for 10 years, so that these states and the North German Confederation now formed a customs union. At the head of this customs union was the Federal Council of the Customs Union (composed of the North German Federal Council and representatives of the South German governments) and the Customs Parliament (the Reichstag of the North German Confederation with the addition of deputies from Bavaria, Württemberg, Baden and South Hesse).

cJ Organisation of the North German Confederation: The North German Confederation had a Federal Council, made up of the representatives of the states belonging to it, and a North German Parliament (on the basis of universal, equal, secret and direct suffrage); the King of Prussia was "the Federal Pre-aidium".

Protection and defence alliances were concluded with Bavaria, Württemberg, Baden and for Hesse with reference to a part south of the Maine.

dJ The Verlust of Luxemburg: After Prussia's victory over Austria in 1866, Emperor Napoleon III demanded "indemnities" (compensations) from France. He was particularly interested in Luxembourg, whose capital, Luxembourg, as a fortress of the dissolved German Confederation, had a Prussian garrison. At the London Conference in May 1868, peace was saved once again, the Prussian garrison withdrew from Luxembourg, the fortress was fortified and Luxembourg was declared neutral under the guarantee of the Great Powers (although it remained in the Customs Union). Thus this German country was pushed out of the overall German development, although in 1848 its representatives in the Paulskirche had campaigned particularly zealously for the creation of a Greater Germany.

3. The founding of the Second Empire: a} The origin: The candidature of Prince Leopold of Hohenzollern (from the Catholic line) for the Spanish throne gave Emperor Napoleon III the pretext for war. The deeper reason was the enmity of the papal see **against** Prussia and the French desire to prevent the unification of Germany.

The southern German states immediately recognised the alliance as a **given**; after the defeat and capture of Napoleon III at Sedan (2 September 1870), a number of treaties were concluded between the North German Confederation and Baden and Hesse (on 15 November 1870), Bavaria (on 23 November 1870) and Württemberg (on 25 November 1870). Attached to these was a "Constitution of the German Confederation", which, repeating the Constitution of the North German Confederation, **added** an Article 80 to the 79 articles of this Constitution, which merely declared that a greater majority of the states included in the

North German Confederation were now to become laws of the German Confederation.

b} The Communication: On 9 December 1870, the Federal Council of this German Confederation, thus reinforced by the representatives of the southern German states, declared that it should now bear the title "German Reich" and the King of Prussia as President the title "German Emperor". Legally, the German Empire thus came into being on 1 January 1987. The imperial coronation in the Hall of Mirrors at Versailles (on 18 January 1871) had only declaratory significance.

The "November Treaties" were adopted by the Reichstag of the North German Confederation and by the constitutional parliaments of Bavaria, Baden, Württemberg and Hesse. This German Reich was thus legally the continuation of the North German Confederation, created by the entry of the southern German states into the Confederation as provided for in Article 79 of the North German Constitution. On 16 April 1871, a "Constitutional Charter for the German Reich" proclaimed"'}.

4. The constitution of the German **Empire:** The German Confederation of 1815 was a confederation of states. In contrast to it, the empire created by Bismarck was a federal state. The empire had supreme sovereignty, but the sovereignty of the individual states was not abolished, only diminished. Every member of the empire was thus in a dual legal relationship: he was both a member of his constituent state and of the empire and subject to the legislative power of both.

The constituent states had not been reduced to mere administrative districts of the empire, but had retained the right to enact laws from their own legal sources. They were still separate states.

The empire, however, was the supreme authority over them, exercised the right of direct legislation, possessed "competency competence", i.e. could extend its jurisdiction at the expense of the federal states by means of constitution-amending imperial law, and its legislation took precedence over state legislation in cases of doubt (Reichsrecourdbricht Landrecht).

I. The scope of the Reich: According to Article 1 of the Reich Constitution, the federal territory consisted of the 25 states listed in the Reich Constitution.

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^°) The differences to the constitution of the North German Confederation are considerable. The southern German states were granted certain special rights, the number of Bundesrat members was increased from 43 to 58, the number of Reichstag members (after the entry of the deputies from Alsace-Lorraine) from 297 to **397.**

The states listed in the first version (four kingdoms, six grand duchies, five duchies, seven principalities and three free cities}. Through the Preliminary Peace of Versailles (26 February 1871) and the Peace of Frankfurt am Main (10 May 1871), Alsace-Lorraine became part of the Reich. By treaty of t. July 1890, Heligoland was acquired and incorporated into the German Empire (by Imperial Law of 15 December 1890) and annexed to Prussia.

II. Form of government, empire and federal states: The empire was a corporation under public law whose members were the 25 federal states mentioned above. The "totality of the federated governments" (Bismarck) was the bearer of sovereignty. It was not the emperor, but the entirety of the states united in the empire that embodied the sovereignty of the empire. The emperor was only first among equals (this is probably how Bismarck's empire was described as a "republic of states with a monarchical apex"). The individual federal states were obliged to fulfil the orders of the empire and to provide it with certain military and financial services, in return for which the individual states as members enjoyed the right to legal protection, to use the empire's facilities and to participate in the formation of the empire's organs. The nature of the empire meant that the rights could be changed for all members of the federation, but not just to the disadvantage of one individual. In addition to these general membership rights, there were special rights:

1. The first of these rights granted a federal state a certain privilege: Prussia's right to the presidency of the Bundesrat, Bavaria's right to six votes in the Bundesrat (instead of the four it was only entitled to by law) and to chair the Bundesrat in Prussia's absence, as well as to a permanent seat on the Bundesrat committees for foreign affairs, land armies and fortresses. (Ancestral rights of Württemberg and Saxony.)

2. In addition, individual states reserved sovereign rights that had been transferred to the Empire (e.g. Bavaria's right to hold legations abroad, the reservations for Bavaria and Württemberg in the area of postal and telegraph services).

III. The Relchsgesetzgebung: The legislative factors of this Second Reich were the Bundesrat and the Reichstag.

a} The Federal Council was

1. The Reichstag was the governing body of the Constitution and decided on "the proposals to be made to the Reichstag and the resolutions passed by it" (Article 7, t).

2. Organization of region: The co-operation of the Federal Council was necessary for the Emperor: in the execution of the Federal Exe-

cution (Article 19), on the dissolution of the Reichstag (Article 24), on the conclusion of certain types of international treaties (Article 4) and on the declaration of a war of aggression (Article 11, 1).

3. Organization of vervice. The Federal Council was authorised to decide above all: "On the general administrative regulations and institutions necessary for the execution of the Reich laws, unless otherwise stipulated by Reich law" (Article 7, 2), and also "on deficiencies which arise in the execution of the Reich laws or the above-mentioned regulations or institutions".

4. As the governing body of the Federal Council, it was responsible for deciding public law disputes between the individual states, as well as constitutional disputes within the individual states, as the final instance.

The Federal Council formed committees for the tasks incumbent upon it. A simple majority applied in the Bundesrat. The distribution of votes ensured that Prussia generally remained decisive.

b} The **Reichstag** was elected in general, equal, direct and secret elections. Every German of twenty-five years of age in the federal state in which he resided was eligible to vote. The legislative period of the Reichstag was originally three years, but was extended to five years in 1888.

1. The tasks of the Reichstage: The participation101) of the Reichstag was required in the adoption of the Reichstag Act, in the formation of the Reichstag and in the adoption of amendments.

The Reichstag had the right of "Initiative", i.e. it could introduce and discuss legislative proposals on its own initiative, but not the right of self-assembly. On the contrary (Article 12), the Emperor was entitled to convene, open, adjourn and close the Diet; the Emperor could only dissolve the Diet on the basis of a decision by the Bundesrat. The Reichstag passed resolutions by an absolute majority of the deputies present, but a majority of the members had to be present. No one could be a member of the Bundesrat at the same time.

Council and the Imperial Council.

2. The members of parliament were privileged. They enjoyed impunity (immunity) for the statements they made as members of parliament, and during the session they could

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101) In individual cases, the Reichstag only had the right to approve government acts that were already legally valid without it, or to take note of them.

no member of the Reichstag could be summoned for criminal investigation or arrested without the authorisation of the Reichstag {if he was not caught in the act or in the course of the following day) ; at the request of the Reichstag, all criminal proceedings and pre-trial detention against a member of parliament had to be suspended as long as the session of the Reichstag lasted.

c} The Kalser: The presidency of the empire was vested in the King of Prussia (Article 11). He went by the name "German Emperor" (the title "Emperor of Germany" had been rejected by the other federal princes).

The Emperor had to represent the Empire under international law. He required the approval of the Federal Council for declarations of aggressive war. He was in charge of the imperial government, had to appoint and approve the Bundesrat and the Reichstag, he appointed the Reich Governor of Alsace-Lorraine; he had supreme command of the navy and the army, he had to draw up the imperial laws, have them promulgated and supervise their execution. He exercised state authority in Alsace-Lorraine and protective authority in the protectorates. In certain cases he had the right to pardon"'}.

d} Character of the constitution of the Federal Republic of Germany: The constitution bears the character of a compromise between the will of the German people for unity and the will of the individual states to maintain their sovereignty. By its very nature, the Reichstag was to be an organ of unity; in reality, the fact of the party system as the most important element within the Reichstag was not mentioned in the constitution. One element of unity was the imperial power. As small as the Emperor's powers were as such, his importance was considerable due to the connection of the imperial office with the Crown of Prussia.

e} Thendent of verious information: Despite the unified top and the unified organs, the federal character of the empire initially prevailed. However, developments moved in the direction of greater standardisation. As early as 1873, the principle was dropped that only the deputies from the respective Länder should decide on matters in the Reichstag that were not common to all Länder. Since then, there have only been joint occasions in the Reichstag. This was not entirely successful

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') The emperor's powers were therefore in reality not great; there were presidents of republics whose constitutional powers considerably exceeded those of the German emperor.

The Reichsfinanzreform attempts of 1904 and 1909-1913 aimed to free the Reich financially from the contributions of the individual states.

In contrast, the expansion of the Reich's administration became significant. The Reich Chancellery developed into a large number of Reich authorities, mostly under the leadership of state secretaries, which were subordinate to the Reich Chancellor, such as the Reich Office of the Interior, Reich Navy Office, Reich Justice Office, Reich Treasury Office, Reich Post Office and Foreign Office. In turn, the Reich Insurance Office, Reich Patent Office and Federal Office for Homeland Affairs were subordinate to the Reich Office of the Interior.

Of great importance was also the increase in the colonialvervation, which was directly under the Emperor).

I} The political participation: Although not mentioned at all in the constitution, the political parties exercised the strongest influence on the fate of the empire. In contrast to the English two-party system, in which the opposition could find itself in the position of having to govern itself at any time, the first German Reichstag of Bismarck's empire {from 3 March 1871) already had over a dozen parties. This created the possibility of an irresponsible opposition. It was particularly alarming that all the parties were jewish (the Social Democrats under the spiritual leadership of Karl Marx, the Liberals under Bamberger and Lasker, the Conservatives under the teachings of the baptised Jew Friedrich Stahl, actually Jolson). The parties all had values that were more important to them than the people, the social democrats the international proletariat, the centre the power of the church, the conservatives the throne and altar.

g} The Parlamentarisation: The Chancellor of the Reich was not legally allowed to go against the Reichstag, in reality he could hardly govern against it. Bismarck and his closest successors had still governed with changing majorities; in the last Reichstag elected before the World War (1912), the Social Democrats with 110 deputies and the Centre with 90 deputies together held an absolute majority. The Centre had become decisive, because without it a workable majority could not be found. It thus also gained increasing influence over the

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) The following were acquired: Southwest Africa, Cameroon and Togo in 1884, German East Africa in 1885, New Guinea in 1885186, the Marshall Islands in 1886, and Kiautschou on a 99-year lease in 1897.
17 April 1886 determined that the Emperor exercised protective power in the German protectorates in the name of the Empire.

Reich administration, while within it the openly anti-Reich demagogic groups around the deputy Erzberger were gaining ground.

During the World War, the imperial parties finally forced the development of a parliamentary state; a few days before the collapse of Bismarck's empire, a law amending the imperial constitution (of 28 October 1918) demanded that the Reich Chancellor must have the confidence of the Reichstag and be responsible to it for the conduct of his office, indeed for all politically significant acts of the emperor in the exercise of imperial rights. In reality, this proclaimed the parliamentary state. On

On 9 November 1918, the Republic was proclaimed by the Social Democratic State Secretary Scheidemann. On 28 November 1918, Kaiser Wilhelm II abdicated. Bismarck's creation of the state had come to an end.

15. "Fat

The development of civil law and criminal law

1. The tent of the German Confederation: The resolutions of the German Confederation of 1815 did not apply directly to the subjects of the individual member states, but first had to be introduced in these states through state laws. The number of uniform laws of the German Confederation is therefore small. Among them stand out:

a} the Allgeneral Deutsche Wechselordnung: A draft of a general bill of exchange drawn up at a conference in Leipzig in 1847 was adopted by the National Assembly of 1848 and promulgated as Imperial Law by Archduke Johann of Austria (on 1 May 1849). In reality, however, the National Assembly had no legislative powers, as it was called upon to deliberate on a constitution. This imperial law was therefore legally invalid. However, this General German Bill of Exchange was introduced as a state law in all German states (with the exception of Luxembourg and Limburg). Following a further conference in Nuremberg, amendments to this bill of exchange ("Nuremberg Amendments") were adopted by the Bundestag in 1861 and promulgated as state laws in the individual states.

In 1856, the Bundestag appointed a commission to draw up a commercial code, which met from 15 January 1857 to 12 March 1861 and published the first four books (I. "Vom Handelsstande", II. "Von den Handelsgesellschaften", III. "Von der stillen Gesellschaft und von der Vereinigung zu einzelnen Handelsgeschäften für gemeinschaftliche Rechnung",

IV. "On Commercial Transactions") in Nuremberg, and the fifth book "On Maritime Trade" in Hamburg. This code of law was introduced in all German states with many amendments.

2. Legislation under the North German Confederation: The North German Confederation (in contrast to the German Confederation) had the right to create legislation directly binding on every subject of the Confederation within the scope of federal jurisdiction.

The North German Confederation made (by Federal Act of 5 June 1869) the Code of Bills of Exchange, the Nuremberg Amendments to the Code and the General German Commercial Code into laws of the North German Confederation. It created a penal code for the North German Confederation of 31 May 1870, a law (of 1 June 1870) on the acquisition and loss of federal and national citizenship, a copyright law of 11 June 1870, a stock corporation law of 11 June 1870 and the (very liberal and, for the trades, very pernicious) trade regulations of 21 **June 1869.**

3. Legislation of the Second German Reich: The above-mentioned laws of the North German Confederation were declared laws of the German Reich (by § 2 of the Reich Law of 16 April 1987t).

a) TheReichsJustical Acts: In 1877, the Imperial Acts appeared, by which the Empire uniformly regulated the judicial procedure of ordinary litigation, namely

1. The Courts Constitution Act (GVG.) of 27 January 1877,
2. the Code of Civil Procedure (ZPO.) of 30 January 1877,
3. the Code of Criminal Procedure (StrPO.) of 1 February 1877,
4. the Bankruptcy Code (KO.) of 10 February 1877.

These laws, each of which included a Reich Introductory Act with general provisions, standardised the organisation of the courts and the trial procedure throughout the Reich. The drafts for the Judicial Constitution Act and the Code of Civil Procedure came from the Prussian Minister of Justice Leonhardt, the draft for the Code of Criminal Procedure from the later Prussian Minister Friedberg.

Supplementary laws to these "Reichsjustizgesetze" include the RG. on the seat of the Reichsgericht of 11 April 1877, the Gerichtskostengesetz of 18 June 1878, the Gebührenordnung für Gerichtsvollzieher of 24 June 1878, für Zeugen und Sach- verständige of 30 June 1878, für Rechtsanwälte of 7 July 1879, the Rechtsanwaltsordnung of 1 July 1878, the RG. on the consular jurisdiction of 30 June 1878, the RG. These include the Court Costs Act of 18 June 1878, the Schedule of Fees for Bailiffs of 24 June 1878, for Witnesses and Experts of 30 June 1878, for Lawyers of 7 July 1879, the Lawyers' Code of 1 July 1878, the Law on Consular Jurisdiction of 10 July 1879 and the Contestation Act of 21 July **1879.**

b) TheRepublicalGesetzbuch: The Imperial Law of 20 December 1873 repealed Article 4 No. 13 of the Imperial Constitution, which gave the Imperial Legislature " the joint legislative power to enact laws of the Federal Republic of Germany".

The German constitution, which assigned to the German Reich "jurisdiction over the law of obligations, criminal law, commercial law, the law of bills of exchange and judicial procedure", was amended to the effect that the Reich should be entitled to "joint legislation on all civil law, criminal law and judicial procedure". On this basis, a preliminary commission was appointed in 1873, followed by a commission to draft a civil code. In 1881, partial drafts were discussed in the Reichstag and in 1888 the draft of an introductory law was published. As this had very strong Roman legal features, German legal scholars objected to it. A new commission was therefore set up in 189t, which published a "Draft Civil Code for the German Reich, 2nd Reading" in 1894-1895. After several amendments, the Civil Code {BGB.) was adopted by the Reichstag on 18 August 1896 with an introductory act and with the force of law from 1 January **1900.**

aa) Information of the BGB. The BGB is divided into five books (General Part, Law of Obligations, Property Law, Family Law, Inheritance Law) with a total of 2385 paragraphs. However, due to the introductory **law,** large areas of law were reserved for state legislation (e.g. leasehold and inheritance law, water, mining and hunting law). The Civil Code was supplemented by the Reich Act on Forced Sale and Forced Administration of 24 March 1897, the Reich Land Register Act of 24 March 1897, the Cheque Act of 1908 and the Insurance Act of 1908.

bb) Development of the Community Code: The Civil Code has given the German Reich legal unity in the most important areas. It is thoroughly thought out and represents the extract of very precise, detailed and careful legal work, and has often adopted German legal ideas, especially in family and inheritance law. Its shortcomings, apart from a language that is not very close to the people, are certainly the strongly liberal spirit that it breathes, it favours monetary transactions, even for land ownership it only knows the free division of inheritance, its labour law provisions were so inadequate that a special labour law developed alongside it early on, its approach often remained individualistic, it only saw the individual and his rights, but hardly or too little the common good.

It became pernicious that important areas of the BGB were commented on in detail by Jewish legal scholars, whose views gained currency in the courts.

c) The Financial Bank: The Federal Law of the North German Confederation of 5 June **1869, which had** been adopted by § 2 of the Introductory Act to the Reich Constitution of 16 April 1871 and which had declared the Code of Bills of Exchange together with its "Nuremberg Amendments" and the General German Commercial Code to be laws of the North German Confederation, had to be adapted to the Civil Code. Thus the former General German

Commercial Code was revised and promulgated as the "Commercial Code" on 10 May 1897. It came into force at the same time as the BGB. on t. January 1900.

d) The Strafgesetzbuch für den Norddeutschen Bund vom 3t. May l87t had been amended by § 2 of the Reich Law of
16. It was transferred to the German Reich on 1 April 1871.

e) The socialagement of the Deutschen Reich: Still under Bismarck, the following were enacted: the law on health insurance of 1883 (together with a number of laws on accident insurance between 1884 and 1887), then the law on invalidity and old-age insurance of 1889; after Bismarck's departure, the labour protection law (restriction of working hours for women and children, Sunday rest of 1891) appeared.

Ij The Chirchsgovernment: In the fight against the Catholic Church's intolerable claims to power

In 1871, the pulpit paragraph was added to the penal code in order to counter the political agitation of the clergy. In **1872,** the Jesuits and their related orders were expelled from the German Reich and a school supervision law was passed. which returned school supervision to the state.

In 1873, the May Acts (of 11 May 1873 on the training and employment of clergy, of t2. May 1873 on the disciplinary power of the church, of 13 May 1873 on the limits of the right to use ecclesiastical penal and addictive substances, of 14 May 1873 on leaving the church) were published in Prussia.

Compulsory civil marriage was introduced in 1875.

Only some of these laws were preserved, the most important of which were the compulsory civil marriage and the law on leaving the church.

16. tell

The Republic and Versailles

1. The armistice and the **November Bevotte:** Since 3 October 1918, the parliamentary system of government had been introduced in the German Reich and a government consisting of Social Democrats, left-wing Liberals and the Centre had been formed. In the night of 4 to 5 October, a declaration was sent to the American President Wilson that Germany was ready to enter into armistice negotiations on the basis of the 14 points of Wilson's message of 8 January 1918.

On 29 October, Marxist sailor riots broke out in Kiel and spread across Germany; in Munich on 7 November, the king was expelled and the republic proclaimed; on 9 November, State Secretary Scheidemann proclaimed the republic in Berlin.

On 11 November, the armistice was signed by Erzberger in Marshal Foch's saloon car. It meant the complete disarmament of the German Reich.

2. The **Peace Dictate:** On 18 January 1919, the peace conference of the 26 Allied and Associated Powers was opened by Clemenceau. On 7 May 1919, the terms of the peace dictate were handed over to the German delegation.

The dictate was signed in Versailles on 28 June 1919 by the Marxi8te Hermann Müller and the Centre Party deputy Dr Bell, thereby committing these parties to carry out the suppression of the German people, just as they had only come to power through the collapse of the German resistance, for which they were responsible.

3. The **Republic:** On 19 January 1919, the National Assembly convened in the State Theatre in Weimar. In reality, it had a very similar appearance to the previous Reichstag. The old parties had essentially remained or had merely changed their names. The National Assembly comprised: 42 German Nationals (formerly Conservatives), 21 members of the German People's Party (National Liberals), 75 members of the Democratic People's Party (Progressives), 75 members of the Christian People's Party (Centre), 163 majority Social Democrats, 22 Independents and 10 independents. It elected Friedrich Ebert as provisional President of the Reich.

4. The constitution of Welmar: ä} Origin: The first draft of the constitution came from the Jew Dr Preuß. The draft represented a compromise **between** the views of the Social Democrats, the Democrats and the Centre. It provided for a Reichstag consisting of the House of States and the House of the People; the members of the House of States were to be appointed by the state parliaments of the individual states. The basic stance of the draft emphasised the democratic unitary state. Bavaria, Württemberg, Baden and Hesse objected to the draft. It was therefore reworked several times in the Constitutional Committee. The result was the "Weimar Constitution" (adopted on 31 July 1919, entered into force on 11 August 1919).

b} the constitution was split into two parts:
"Structure and Tasks of the Reich" and "Fundamental Rights and Basic Duties of Germans".

The republican form of government was prescribed for the Reich and the Länder, and the Reich had more extensive legislative power over the Länder than before. The colours of the Reich were determined to be black, red and gold (colours which were completely devalued by the fact that they had already served the agitation for subversion during the World War).

aa} The Belchatag: The Reichstag got the secourity government. It was composed of deputies who were elected by universal, equal, **secret** and direct suffrage by all men and women over 20 years of age according to the principles of proportional representation. The Reich government required the confidence of the Reichstag and had to resign following a vote of no confidence. The number of parties increased to almost 40 during the Weimar Republic. As a result, each government majority was made up of numerous parties and its policies were the result of numerous internal compromises. The Reichstag, however, had become the actual arbiter of state policy decisions.

bbJ **The Belchsrat:** The Reichsrat, the representation of the states in the legislation and administration of the empire, only had a veto right and its powers were restricted.

cc) The provisional Reich Economic Council: In addition to the Reichstag and Reichsrat, the provisional Reich Economic Council had the right to introduce bills.

ddJ The Belch President: The Reichspresident was elected by the people for seven years. He represented the empire in international law, appointed the imperial civil servants and, as commander-in-chief, the officers of the army. He could dissolve the Reichstag and had the right to appeal to a referendum against laws passed by the Reichstag.

All his orders had to be countersigned by the Reich Chancellor. The Chancellor determined policy.

cJ The Reich and the Länder: In contrast to the constitution of Bismarck's time, the Weimar Constitution (one of its few advantages) increased the power of the Reich in relation to the Länder. Each Land had at least one vote in the Reichsrat, the larger ones each had one vote per 700,000 inhabitants, and half of the Prussian representatives in the Reichsrat were appointed by the Prussian provincial administrations.

aaJ **The amalgamations** tm Belch: The Kleinstaaterei was pushed back somewhat by the fact that Pyrmont and Waldeck joined Prussia, Coburg joined Bavaria and the Thuringian states came together to form the state of Thuringia. A union of Mecklenburg-Schwerin and Mecklenburg-Strelitz, which was already possible under constitutional law under the Empire, did not succeed.

bb} Extension of the jurisdiction of the Reich: The extension of the exclusive Reich administration to the military, customs and postal services, then the takeover of almost the entire tax administration by the Reich ("Reich Finance Administration Act" and "Reich Tax Code") became significant, partly forced by the extraordinary economic hardship of the Reich.

Fundamental rights and fundamental rights: The second part of the Weimar Constitution, the so-called The second part of the Weimar Constitution, the so-called rights and freedoms, were either a libe-rale pelts or the compro mmissions (Schulcompromission) between the Centre and the Social Democrats.

They emphasised a maximum of individual freedoms, while completely lacking any consideration for security, power and the political thrust of the state towards the outside world. The state was seen purely as an instrument of order that had to guarantee the bourgeois way of life in the opinion of the ruling parties.

dJ The weaknesses of the Weimar Constitution: The major problems of constitutional law, some of which were inherited from the German Empire, were either not solved by the Weimar Constitution at all or were solved incorrectly.

aaJ The **wrong** solution **to the problem:** Belch **and Lflnder.** The position of the empire in relation to the states (in Bismarck's empire somewhat happily solved by the hegemonic rights of Prussia and by the personal unions between the empire and Prussia, the connection of the imperial title with the King of Prussia, the appointment of the Imperial Chancellor as Prussian Minister President) became a serious crisis. Prussia's rights of hegemony had been removed, the personal union at the top had been abolished, and the parliamentary form of government in the Empire and in the Länder made the formation of governments of very different party tendencies possible. Such governments faced each other as opponents and thwarted each other's policies.

Prussia, for example, became the domain of the Social Democrats, Bavaria the domain of the Bavarian People's Party; foreign countries were already interfering and attempting to create new states within the Reich with a tendency towards secession (Republic of the Rhineland). A reform of the Reich had been debated since 1928. However, no tangible results were achieved.

The self-explanation of the solution to the problem through the constitution**:** Under the von Papen cabinet, there was an open battle between the Reich government and the Social Democrat-controlled Prussian government. The Reich government removed the Prussian ministers from office and had the Prussian state affairs taken over by Reich commissioners; the Prussian ministers appealed to the State Court, the judgement of the State Court led to the practically impossible situation that, in addition to the Reich commissioners appointed by the Reich, the deposed Prussian cabinet should continue to exist as a "sovereign government" and was declared responsible for the political leadership of Prussia. In Bavaria, on the other hand, the government there always went its own way and only followed instructions from the imperial government as far as it suited it,

bbJ The political party system: As a result of proportional representation, which also offered very small groups the opportunity to gain parliamentary representation, party fragmentation had become very high.

No party was able to free itself from its pre-war past and its ideological ties. In reality, none of them claimed to represent the whole people, **but** only **certain** factions (the Social Democrats and the **Christian Democrats**; the workers, the Centre; the Catholic population, the various economically organised parties; the farmers, the craftsmen, etc.). In this form, the party system already harboured the end of a completely inconclusive dispute.

The parties fought each other fiercely. In many cases, membership of certain parties had become hereditary in individual sections of the population. The inner peace was disturbed. In the masses, even the great necessities of the state were no longer evaluated according to general considerations, but according to party considerations. In the final stage of the "system", Germany was close to the outbreak **of** open civil war.

1. Increase: The parties had disempowered themselves. The constitution placed all power in the hands of the Reichstag.

However, the Reichstag in particular became increasingly incapable of forming a viable majority. The "Weimar Coalition" {Centre, Social Democrats and Democrats) did not last long. Then the majorities changed, the Reichstag dissolutions followed each other in rapid succession, finally a viable majority could no longer be formed at all and the Reichstag, the unrestricted sovereign of the constitution, had become incapable of working.

The imperial governments were re-formed after]every new Reichstag election. The policy thus changed from cabinet to cabinet. It lacked any unified line. When the Reichstag was finally no longer able to form a viable majority, the formation of the Imperial Cabinet8 also slipped from its grasp.

2. In the lands: As early as the first decade of the Weimar Republic, some of the state parliaments in the individual federal states were unable to function, and almost all of them in their final stages as a result of party divisions. With few exceptions, they also lacked viable majorities. In most of the states, there were only caretaker governments at the end, i.e. state governments that had already been overthrown by the state parliament but remained in office until a new government was formed. However, a new government was not formed because the state parliament could not muster a viable majority.

cc) The presidential cabinet: As if to mock the Weimar constitution, which sought to embody the victory of the republican over the monarchical idea, the reaaon of the monarchical apex, the Reichspräsident, whose rights were extraordinarily restricted by constitutional law, proved to be the comparatively strongest institution. With the help of Article 48 of the Weimar Constitution, he maintained "order" to a certain extent.

The Reich President finally appointed the Reich Chancellor and the Reich Ministers without regard to the Reichstag, solely on the basis of his personal selection, and made the exceptional powers from Article 48 of the Weimar Constitution available to the Cabinet. The Cabinet then governed on the basis of the authorisations in Article 48 with emergency decrees, which were issued in the name of the Reich President without the consent of the Reichstag. Thus, the exceptional provision of Article 48 had finally become the final basis of the state's existence
- truly a refutation of the Weimar Constitution, whose only part upholding the state8apparatus was its "exception".

However, the form of this government through presidential cabinets was untenable in the long term. At any time, the Reichstag could repeal the emergency decrees on the basis of Article 48 and overthrow such a presidential cabinet. As incapable as it had become of assembling a viable government majority, parties of the allied parties were able to overturn emergency decrees or overthrow a cabinet.

The different directions easily came together. The appointment of presidential cabinets was therefore only a temporary measure.

The Weimar constitution had completely refuted itself and was invalidated when victorious National Socialism put an end to it.

e} The **legislative achievement** of the Weimar Republic: Its internal divisions and weakness made it impossible for the Weimar Republic to create effective legislation. The "Reichsbetrieversatement" merely organised the struggle between "workers" and "employees" within the company and gave it certain forms, without being able to eliminate strikes and riots as a means of political struggle. Important tasks of the people as a whole, e .g. the defence of the right to vote, the reform of the tax system brought over from the pre-war period, were left undone. The rule of the youth within the leading positions of the state and the economy paralysed any political reorganisation.

17. 7et1.

The National Socialist state

1. Dle Machttergrelfung"'l: On 30 January 1933, Reich President von Hindenburg appointed Adolf Hitler as Reich Chancellor after the last presidential cabinet of General von Schleicher had also failed. Adolf Hitler formed a cabinet under his leadership.

2. The constitutional reorganisation: A new Reichstag election was held on 5 March 1933, which gave the government an absolute majority in the Reichstag. On this basis
"Gesetz zur Behebung der Not von Volk und Staat" of 24 March 1933 (RGBl. I, page 1411) enacted the first Basic Law for the Reich.

The "Act to Remedy the Distress of the People and the State" gave the Imperial Government the right to enact Imperial laws without consulting the Imperial Diet (such a legislative right of the executive power was alien to the conceptual structure of the previous liberal constitutional law, contradicted the principle of the separation of powers (Montesquieul, which had given the legislative power the right to enact laws without consulting the Imperial Diet).

' -) See also p. 1 of the publication series "Rechtspflege und Verwaltung" : "Die geschichtlichen Grundlagen des Nationalsozialismus."

the executive power to the government).

The unification of legislative and executive power in the hands of the imperial government meant that the government was no longer forced to request the authorisation of laws from the Reichstag, even if the previous parliamentary legislative procedure, which in reality had become meaningless, remained in place.

The "Law to Remedy the Distress of the People and the Reich" is thus an authorising law for Adolf Hitler's government. It also gave it the right to implement laws amending the constitution. The law was limited to a period of four years. On 30 January 1937 (RGBl. 1 69) it was extended to another four years and on 30 January 1939 (RGBI. 1 71) until 10 May 1943 was extended.

3. The solution to the **"Länder and Reich"** question**: The** Enabling Act was passed while at the same time the national socialist movement was eliminating particularist resistance:

The Prevention of the Government of the Landers of 31 March 1933 {RGBI. I S. 153).

The Seconditional Gesetz zur Gleichschaltunders with the Reich of 7 April 1933 together with the amendment laws of 25 April 1933, 26 May 1933 and 14 October 1933 (RGBI. I p. 173.

a} The Provisional Act to Link the Länder with the Relch (of 31 March 1933) had two tasks: to simplify the legislation of the Länder and to reorganise the political representations of the Länder, self-governing bodies and municipalities (most of which had been formed before Adolf Hitler came to power).

For the purpose of the implementation of the provincial law, the provincial governments were given the power to enact provincial laws without the participation of the provincial parliament.

With the exception of the Prussian Landtag (which had been re-elected at the same time as the Reichstag on 5 March 1933), the political assemblies were dissolved.

They were reconstituted without new elections in such a way that the parties were allocated seats on the basis of the votes cast within their country in the Reichstag elections of 5 March 1933 (the Communist Party received no more seats from the outset; the allocation of seats to the Social Democratic Party was soon reversed.

In a similar way, the municipal self-governments body reassembled.

b) The Second Law on the Gletcbscbaltuzig of the l.ttader zatt deza Reich of 7 April **1933 (1st** Reichstatthaltergesetzetz**)** stipulated that Reichsstatthalter, proposed by the Reich Chancellor and appointed by the Reich President, were to head the Länder. A joint Reich Governor could be appointed for smaller states. For Prussia, the Reich Chancellor became Reich Governor **(cf.** the personal union of **Prussia** and the Reich under Bismarck).

The Reich Chancellor has transferred the delegable powers of the Reich Governor in Prussia to the Prussian Minister President.

Tasks of the Reichsstatthalter: The Reichsstatthalter were given the task of ensuring that the political guidelines laid down by the Reich Chancellor were observed in their states. This meant that the provinces were obliged to comply with imperial policy"').

The Reich Governor had the following sovereign powers:

1. Regilation: The Reich Governor appointed and dismissed the Chairman of the Provincial Government and, at his suggestion, the other members of the Provincial Government.

2. The Reich Governor had to adopt and enforce the laws passed (by the Diet, as long as it still existed) and by the provincial government. In any case, it is entitled to a
The law is subject to examination as to whether it complies with the law and the National Socialist world view.

3. Appointment and dismissal. The Reich Governor appointed and dismissed those direct civil servants and judges who had previously been appointed and dismissed by the supreme state authority on the recommendation of the state government.

4. Dissolution of the Diet a. The right of the Reich Governors to dissolve the Diet has become meaningless due to the abolition of the Diet.

5. Pardon. The Reichsatthalter exercised the right of pardon insofar as it was previously the responsibility of the supreme state authority.

c} The **"Law** on the Reorganisation of the Reich" of 30 January **1934** (RGBI. I p. 71) (enacted and unanimously passed by the Reichstag on the first anniversary of the seizure of power) brought: the abolition of the popular representations of the **Länder:** With the Land parliaments of the individual Länder, which were abolished, the legislature also fell. legislation by the parliament in the individual countries.

Transfer of the sovereign rights of the Länder to the Reich: Article 2, 1 of the Law on the Reconstruction of the Reich stipulated: "The sovereign rights of the Länder shall be transferred to the Reich."

'°) On 14 October 1933, all state parliaments were dissolved. solved.

The countries thus have no state power and no legislative power from their own source. They are no longer states.

The Reich is therefore not a federal state, but a unitary state; the Länder are merely administrative districts of the Reich, whose tasks and activities are regulated by the Reich.

Thus, in the case of the provinces, the territorial authority has ceased to exist; the empire can therefore determine the boundaries of its administrative districts, the former provinces, on its own, the way to a reorganisation of the empire is open.

The nationality requirement has been abolished. Since the "Ordinance on German Nationality" of 5 February 1934 (RGBI. I p. 85) there is only one Reich affiliation.

The legislation of the federal states in their own right has ceased to exist. Insofar as the state governments still enact laws, this is done on behalf of the Reich. All laws of the state governments require the approval of the Reich Minister in charge. The Reich may at any time prescribe to the state governments which laws they must enact or enact laws in their place.

The administrative authority of the federal states has been transferred to the Reich. All previous Land authorities have become indirect Reich authorities. The state governments have been given In the "First Ordinance on the Reconstruction of the Reich" of 2 February 1934 (RGBl. I p. 81), the Reich reassigned the right "on behalf of and in the name of the Reich" to establish, abolish or determine the jurisdiction of authorities.

The administration of justice has been transferred to the Reich.

The first "Law on the Transfer of the Administration of Justice to the Reich" of 16 February 1934 {RGBl. I p. 911 and the second law on the transfer of the administration of justice to the Reich of 5 December 1934 (RGBI. I p. 1214) authorises the Reich Minister of Justice to issue all necessary orders for the transfer of judicial sovereignty to the Reich on the basis of the transfer of judicial sovereignty to the Reich.

The state governments were transformed from supreme organs of the individual states into administrative authorities of the Reich by the Law on the Reorganisation of the Reich. They were thus also placed under the supervision of the Reich government.

The Reighsregilation became the superior supervisory authority and took over the technical and factual management of the state governments).

'--) See also issue 2 of the series of publications "Rechtspflege und Verwaltung": "Volk, Partei, Staat.".

The **Reichsrat** as the political representation of the federal states had become superfluous with the disappearance of the statehood of the federal states. It was abolished by the Act on the Abolition of the Reichsrat of 14 February 1934 (RGBl. I p. 89). The representations of the federal states to the Reich were abolished.

The **provisional** Relchswtrtschaftsrat was established by ordinance of 23 March 1934 (RGBI. II, 115J eliminated.

d} The unification of power in the hands of the leader. Reich President von Hindenburg died on 2 August 1934. On 1 August 1934 (RGBl. I p. 747), the "Law on **the** Head of State **of the German Reich"** had already been passed by the Reich government. At the express wish of Führer Adolf Hitler, the law on the head of state of the German Reich was submitted to the German people for a referendum. This took place on 19 August 1934 and resulted in a unanimous declaration by the people in favour of Adolf Hitler. On the basis of the "Law on the Head of State of the German Reich", all powers previously vested in the Reich President under the Weimar Constitution and other laws were transferred to the Führer and Reich Chancellor Adolf Hitler.

The Führer and Reich Chancellor is thus legally completely unrestricted. Nor can it be said that the rights united in his hands could be regarded as a combination of the rights of the Reich President and the Reich Chancellor under the Weimar Constitution. Rather, the Führer and Reich Chancellor is the holder of the entire plenitude of all state power in the German Reich.

All parliamentary-democratic restrictions to which the Reich Chancellor and the Reich President were subject on the basis of the Weimar Constitution were abolished (e.g.The requirement that the Reich Chancellor countersign the orders and decrees of the Reich President (Article 50 of the Weimar Constitution), the time limit on the term of office of the Reich President and the provisions on the election of the Reich President, especially the possibility of dismissing the Reich President by referendum at the request of the Reichstag (Article 43, 2 of the Weimar Constitution), the impeachment of the Reich President by the State Court (Article 59 of the Weimar Constitution, etc.).

As Führer and Reich Chancellor, Adolf Hitler is the leader of politics, legislation, administration and the clerical system.

and supreme commander of the Wehrmacht. No ruler in Germany's past has ever united such power in his hands as Adolf Hitler.

e} The Reich Governor Act of 30 January 1835: The "Reich Governor Act of 30 January 1935" (RGBI. I p. 65) ("New" Reich Governor Act) regulated the position of the Reich Governor's Office anew.

aaJ The position of the Reichstatter: The Führer and Reich Chancellor freely nominates and appoints the Reich Governors. He determines their official districts").

bb} Recondition of the Reichstatther: The Reich Governor is the permanent representative of the Reich Government in his state, is subject to its authority and can receive instructions not only from the Reich Minister of the Interior, but from any Reich Minister. He bears an imperial seal, is responsible for observing the political guidelines laid down by the Führer and carries out the political management of his district on behalf of the Reich Government.

For this purpose, all Reich and Land authorities and offices in his official district must inform him; he may draw their attention to the necessary measures and give them instructions. The right to information is not transferable. The Reich Governor is subordinate to the provincial government, can demand reports from it and its members and intervene in its orders in the event of imminent danger.

The Führer and Reich Chancellor has the authority to commission the Reich Governor to lead the state government. This makes the Reich Governor the sole head of the state administration.

Assessment: The National Socialist state has thus realised the German unitary state. The problem of the struggle between states and empire, which had burdened the history of our nation for a millennium, has disappeared.

The legislation of the Nazi state: The Führer has created new and far-reaching legislation in all areas of life. On this, see the other issues, especially issues 2 and 3 of the series "Rechts- pflege und Verwaltung".

'-') When the "New Reich Governor's Law" was enacted, the German Reich had eleven Reich Governor's districts, namely **Bavaria,** Saxony, Württemberg, Baden, Thuringia, Hamburg, **Hesse,** Brunswick-Anhalt, Oldenburg-Bremen, Mecklenburg, **Lippe** and Sehaumburg-Lippe.

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